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# FOREIGN SERVICE DESPATCH

FROM : AmEmbassy TOKYO

185
NO.

TO : THE DEPARTMENT OF STATE, WASHINGTON.

August 28, 1961
DATE

REF

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SUBJECT: Consular Convention with Japan

Negotiations between the Embassy and the Foreign Ministry on the subject of the proposed consular convention between the United States and Japan, which have been in abeyance since August 1956, were formally resumed on July 17, 1961. Five meetings in this connection have now been held, at the club premises (Kayu-Kaikan) of the Ministry of Foreign Affairs.

Draft Memoranda of Conversation covering each of the five meetings are transmitted herewith as Enclosure No. 1. The substantive content of these memoranda is submitted in a topical, rather than chronological, format in Enclosure No. 2. These two enclosures should be read in conjunction with the document entitled "Views of the Japanese Government on the Text of the Proposed Consular Convention between Japan and the United States of America" which is attached hereto as Enclosure No. 3.

The first three enclosures to this despatch reflect the current position of the Japanese Government regarding the consular convention and indicate its reaction to the annotated long form text most recently proposed by the United States. Copies of this annotated text were furnished to the Department by the third enclosure to the Embassy's D-1450 of June 6, 1960 and the two enclosures to its D-1137 of April 7, 1961. There is agreement on the Japanese side with a number of the proposals formulated by the United States since the consular convention negotiations were suspended in 1956. The Japanese Government has additionally responded, however, with a number of new proposals of its own. For convenience of

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REPORTER

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comparison, there is forwarded herewith as Enclosure No. 4 the collated texts of the latest United States and Japanese versions of the proposed consular convention. These contain both the wording with which there is now agreement by both sides, as well as that on which agreement is still to be reached.

Major Areas of Difference

There are three principal areas covered by the proposed consular convention in which major differences between the positions favored by the United States and Japan are clearly defined.

The first of the major differences stems from the Japanese proposal to divide the consular employee group, for purposes of according immunities and privileges, into two parts: an administrative or technical staff and a service staff. The United States view, with regard to Article 2 (10), rejects the concept of according different privileges and immunities to different groups in the consular employee category. It is the Japanese contention that this differentiation in the consular employee category is required by the recent Vienna Convention on Diplomatic Relations (adopted by the United Nations Conference on Diplomatic Intercourse and Immunities on April 14, 1961). The Japanese position may be acceptable to the United States, however, if, as the Foreign Ministry states it has been informed by the Japanese Embassy at Washington, the Department intends in due course to present the Vienna Convention to the Senate for ratification.

The second of these major divergences in views is that of Japan's insistence upon the inclusion of the principle of most-favored-nation treatment in consular conventions to which it is a party. The Japanese argument is based on Japan's historical adherence to the most-favored-nation principle and the fact that the United States-Japan Consular Convention will set a pattern for other agreements of the same type that Japan expects to conclude in the future.

The third important difference is Japan's desire to obtain specific recognition of the right of Japanese consular officers to provide consular services to Ryukyuans in the United States. The Japanese have agreed in probably substantial part with the United States position, however, by agreeing to the deletion of the provision in paragraph 2 of the Protocol relating to the representation in the United States of Ryukyuan juridical entities and to the limitation of the representation of Ryukyuan persons in the United States to those matters for which authorization from Ryukyuan authorities is not required. The Foreign Ministry considers

the Ryukyuan question to be the crucial issue in the proposed convention and believes it likely to be the one on which the interest of the Japanese Diet will be principally focused.

Minor Areas of Difference

Of possibly lesser importance are, in addition to relatively minor word changes, the Japanese proposals in Article 11 (1) (a) to withhold immunity from the jurisdiction of the courts of the receiving state for consular employees who are nationals of that state and in Article 21 (1) to deny the right of a master or a member of the crew of a vessel to "visit" his consular officer from a port in the receiving state that is closed to immigration. The Japanese do not propose, however, to deny the immunity that would be accorded by Article 11 (4) (b) to local national consular employees in respect of testifying or producing documents regarding matters connected with their official duties. Neither do they appear to contemplate preventing the landing, in the event of an emergency (see page 21 of Enclosure No. 1), by a master or crew member of a vessel that may be at a port that would otherwise be closed to landings by aliens. In this latter regard, the Department may wish to have specific provision included in the convention text to cover an emergency situation.

Service of Legal Process

In connection with the Department's study of the new Japanese proposal for the service of legal process by consular officers in Article 17 (1) (e) (i), it is recommended that consideration be given to there being a United States counterproposal that would not only provide for the service of legal process by consular officers but would also permit such service to be made by a United States-court appointed attorney duly authorized to practice law in Japan. This counterproposal could be in the form of an Agreed Official Minute to Article 17 (1) (e), to read substantially as follows: "The provisions of Article 17 (1) (e) (i) shall not be construed to prejudice the right of an attorney appointed by a court in the United States and duly authorized to practice law in Japan to serve judicial documents on United states and non-United States nationals in accordance with the laws of the United States." This suggested wording might be presented as a quid pro quo for United States agreement to the inclusion in the convention of a provision covering the service of process by consular officers, which is strongly desired by the Japanese Supreme Court with the support of the Ministry of Justice. Acceptance of the Embassy's recommendation would provide a simple, inexpensive and expeditious method of serving legal process on Americans and non-Americans in Japan.



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Answers to Specific Japanese Queries

The Embassy would appreciate receiving the Department's instructions regarding the nature of the replies that may appropriately be made to the following questions that were raised by the Japanese side at the fifth negotiating meeting (see Enclosure No. 1):

1. Taking of evidence by consular officers. Why has the United States not proposed in the consular convention with Japan the inclusion of the provision that is contained in its conventions with the United Kingdom and Germany whereby "special arrangements" are to be made for the taking of evidence by consular officers? Also, the Japanese side wishes to know the manner in which such special arrangements are promulgated and desires a textual copy of their content.

2. New United States consolidated article on Estates and Transfer of Property. Why is the phrase "who is not a resident of the receiving state at the time of his death" used in sub-paragraph 2 (b) and not in sub-paragraph 2 (a)?

Responses to New Japanese Proposals

The Japanese side has stressed its interest in proceeding as rapidly as possible toward the resolution of the remaining points at issue in the proposed consular convention. It is anticipated by the Embassy, however, that certain of the new Japanese proposals and counterproposals may need protracted consideration within the Department and, presumably in some instances, consultations with other Washington agencies. Nevertheless, it would be of particular help if the Department could forward to the Embassy at an early date instructions covering at least those issues, including proposed word changes, that are of a more minor nature and will not require prolonged study.

For the Ambassador:

Joseph J. Blake

Ralph J. Blake
Counselor for Consular Affairs

Enclosures:

1. Draft Memoranda of Conversation.



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2. Substantive content of memoranda, arranged topically.

3. Views of Japanese Government.

4. Collated texts of proposed consular convention.

Formal Resumption of US-Japan Consular Convention Negotiations

1st Meeting, July 17, 1961, Kayu Kaikan, 2:00 p.m.

Japanese Delegation:

Mr. Toru Nakagawa, Director, Treaties Bureau, Ministry of Foreign Affairs
Mr. Fumihiko Togo, Deputy Director, Treaties Bureau
Mr. Motoo Ogiso, Chief, Legal Section, Treaties Bureau
Mr. Hirohiko Otsuka, Secretary, Legal Section
Mr. Mitsuro Donowaki, Secretary, Legal Section
Mr. Gohachiro Shono, Secretary, Legal Section
Mr. Takeo Iguchi, Secretary, Treaties Section, Treaties Bureau
Mr. Keishiro Matsumura, Secretary, North American Section, American Affairs Bureau
Mr. Kumao Kaneko, Officer, Legal Section
Miss Hisami Mano, Secretary, North American Section, American Affairs Bureau

American Delegation:

Mr. Ralph J. Blake, Counselor of Embassy
Mr. Harrison M. Holland, Second Secretary of Embassy

Preliminaries

Mr. Nakagawa opened the meeting by welcoming the American side and he expressed the hope that the negotiations would be successful. He then presented a document for study entitled "Views of the Japanese Government on the Text of the Proposed Consular Convention between Japan and the United States of America", dated July 17, 1961. He said that it was not necessary to begin discussion of this document at the first session and indicated that during certain future sessions representatives from other interested Ministries within the Japanese Government would be present. Mr. Nakagawa also gave the American side a list of questions which had been prepared by the Ministry on the draft Convention furnished the Ministry by the American side in April 1961.

Mr. Blake responded to Mr. Nakagawa's words of welcome and then suggested that the first meeting concern itself primarily with procedural questions.

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Japan: There are few substantial differences separating our two Governments and certain technical questions seem to be all that remains to be resolved.

US: Does the term new proposal under Article 1 of the document "Views of the Japanese Government on the Text of the Proposed Consular Convention between Japan and the United States of America" indicate in effect that new proposals are being put forth?

Japan: Yes. Where new proposal appears, it means that we are proposing a new point for consideration.

US: New proposals plus any agreements by negotiators on outstanding differences must be referred to the Department of State in Washington before final approval can be given by the U. S. Also, the final agreed minutes of the negotiating proceedings will be sent to the Department of State.

The preparation of the minutes, research into the background of new Japanese proposals, forwarding to Washington requests for advisory opinions on questionable points all require time and in view of this how many meetings each week are contemplated?

Japan: We believe that as many meetings as possible should be convened in order to expedite the conclusion of a Consular Convention.

US: We propose that the minutes be prepared by the U. S. side as was done in the earlier negotiations and, after being agreed to by the Japanese side, be initialed by both the Japanese and the U. S. sides, with copies being given to each for its own use.

Japan: This is agreeable. It is suggested, subject to the U. S. side's agreement, that the questions listed on the question sheet furnished by us be discussed now.

In Article 3 (1) of the draft text, is the Ministry correct in understanding that the second sentence of this paragraph does not exclude the establishment by the sending state of a branch office of a consulate general or a consulate?

US: We wish to defer consideration of this question pending review of applicable background material.

Japan: Is the use of the term "probable" before "cause" in the second sentence of Article 8 (4) of the draft text appropriate?

US: The meaning of "probable" will have to be studied. However, a reasonable interpretation of the term would be "appropriate". As an example, if a consular office of the sending country were closed and a fire were to break out in the office, firemen of the receiving country would have "a probable cause" to enter the premises of the consular office to extinguish the fire.

Japan: Is there another appropriate word that could be used in place of "probable" and is there any significant legal interpretation of the meaning of the word "probable"?

US: We will study the precise meaning of this word further.

Japan: In Article 11 (4) (a) of the draft text, is the Ministry's understanding correct that the expression "in either a civil or a criminal case" does not exclude cases involving violations of the Immigration Control Order or of the Customs Law?

US: The expression in "either a civil or criminal case" would not exclude cases coming under the Immigration Control Order or Customs Laws. Such cases would be either civil or criminal, both of which are covered by the draft text.

Japan: Are cases involving violations of immigration control laws and customs laws considered criminal or civil violations?

US: It would depend on the circumstances; but probably most cases would be considered criminal cases when handled judicially. However, in most cases where a consular officer would be asked to give testimony, with respect to violations of immigration or customs laws, it would be before an administrative rather than a judicial authority. The text indicates that receiving states may require foreign consuls to give testimony before administrative authorities.

Japan: In Article 17 (1) (b) of the draft text, will the medical examination referred to in this sub-paragraph be conducted on persons who possess double nationalities of both Japan and the United States and will the medical examinations be carried out compulsorily?

US: In the case of a person present in Japan with such dual nationality, the U. S. could not claim exclusive jurisdiction and if the individual



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concerned or the Japanese authorities objected to a medical examination for U.S. Selective Service or other purposes the U. S. would have to heed this objection. The U. S. cannot forcibly require a U. S. citizen residing abroad to take a medical examination.

Japan: In Article 17.(1)(f), what does the term "public registry" specifically mean?

US: The words "documents of public registry" have reference to documents recorded by an appropriate local official for public use. For example, vital statistics concerning births, deaths, marriages, divorces, and so forth, or documents that are registered pertaining to title to property would be included within this definition.

Japan: Would such public registry include a record of Diet proceedings?

US: The key word is "public" and, as mentioned before, has reference to the registry of documents by appropriate local officials.

Japan: In the new article of the draft text which substitutes for Articles 18, 19, and 20, we wondered about the relationship between sub-paragraphs (a) and (b) of paragraph 2 and about whether the terms "personal property" and "personal estate" which appear in sub-paragraph (a) mean the same thing. However we feel that discussion of these points should be deferred until a representative of the Ministry of Justice is present.

US: This is agreeable.

Japan: Under Article 21 (1), if the provisions of the Immigration Control Order of Japan were applied, the privileges granted to seamen in this paragraph would be modified. For example, would a master of a vessel and crew members be able to leave the vessel and proceed to the office of the consul to discuss a problem? Under the Japanese Immigration Control Order, such a departure from a vessel would be considered a "landing" in Japan by aliens. In certain ports open to shipping but closed to immigration a landing is prohibited under the Order. The term "visit" in the first sentence of Article 21 (1) is the point at issue in interpreting this sentence.

US: Under U. S. procedures, it would be considered that a master and the members of the crew of a vessel should have the right to visit their consul if necessary. Was the immigration order prohibiting this promulgated before or after the Japanese and the U. S. sides had agreed on the wording for this particular article?

Japan: It was promulgated before the present draft text had been agreed upon. It is suggested that the whole matter be deferred until a later time.

In Article 22 (3), of the draft text, the powers of consuls to "arrange for the engagement and discharge of the master and members of the crew" in this paragraph would conflict with the domestic laws of Japan if exercised by American consuls in Japan. According to Article 33 of the Seamen's Employment Security Law of Japan, no one other than the Government is permitted, in principle, to engage in the business of finding employment for seamen. What does the expression "arrange for the discharge" exactly mean?

US: The wording in the text is innocuous. A consul would not engage in the business of finding employment for seamen but would attempt to repatriate those of his own nationality who are stranded within the area of his jurisdiction. The consul would not solicit employment for a U. S. seaman, other than in compliance with U. S. statutory requirements. In connection with the term "arrange for discharge", if a seaman is discharged abroad from a vessel of U.S. registry it must normally be done before an American consul under U. S. law.

Japan: In Article 23 (1) of the draft text, is it appropriate to use the term "the master" in the passage which reads "contracts of service between the master and members of the crew", in the second sentence of this paragraph? It may well be replaced by such expression as "the owner of the vessel or his agent."

US: When a vessel of U. S. registry sails from a U. S. port an agreement called the Shipping Articles is drawn up in which the master of the vessel is the party of the first part and the seamen are the parties of the second part. Thus, the master acts on behalf of the owners or operators in the capacity of the latter's agent and the term "master" in the draft text is therefore appropriate.

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Formal Resumption of US-Japan Consular Convention Negotiations

2nd Meeting, July 19, 1961, Kayu Kaikan, 2:00 p.m.

Japanese Delegation:

Mr. Fumihiko Togo, Deputy Director, Treaties Bureau
Mr. Motoo Ogiso, Chief, Legal Section, Treaties Bureau
Mr. Mitsuro Donowaki, Secretary, Legal Section
Mr. Gohachiro Shono, Secretary, Legal Section
Mr. Takeo Iguchi, Secretary, Treaties Section, Treaties Bureau
Miss Hisami Mano, Secretary, North American Section, American Affairs Bureau
Mr. Toshitake Katayama, Secretary, Protocol Section
Mr. Kumao Kaneko, Secretary, Legal Section

American Delegation:

Mr. Ralph J. Blake, Counselor of Embassy
Mr. Harrison M. Holland, Second Secretary of Embassy

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US: We would like to comment on the two questions asked by you at the last meeting concerning Article 3 (1) and Article 8 (4) respectively of the draft text. With respect to the question relating to Article 3 (1), this matter was the subject of a discussion between the Ministry and the Embassy in connection with the possible designation of certain American Cultural Centers in Japan as branch consular offices. The wording of this Article would probably not exclude the establishment of branch offices of a consulate or consulate general by the sending state.

Japan: We also interpret this provision as not excluding the establishment of such branch offices by the sending state.

US: With respect to the meaning of the term "probable cause" used in Article 8 (4), we have consulted a legal dictionary and believe the definition "having more evidence for than against" represents the essence of the meaning.

Japan: Translated into Japanese this would have the meaning "reasonable cause". Is this the same thing?

US: Yes, approximately the same.

The Embassy intends to send a copy of "Views of the Japanese Government on the Text of the Proposed Consular Convention Between Japan and the United States of America" dated July 17, 1961, given to us by you at the first meeting, to the Department of State accompanied by clarifications on various points raised in this document. We would therefore like to proceed article by article to obtain such clarification as you wish to give us for transmission to the Department. For example, with respect to your desire to eliminate Article 1 of the draft convention, what are your comments or views on this?

Japan: This article is not in itself objectionable. However, we may negotiate other consular conventions from time to time and might not wish to have such an article included in the convention. Unless you have pressing reasons for its retention, we would prefer that it be eliminated. We believe the only purpose served by its inclusion was to exclude the Canal Zone from the provisions of the Convention and this point is covered in a proposed amendment to the Protocol.

US: What are your views with respect to Article 2 (10) in which you have made certain suggestions with respect to redrafting of the sub-paragraph?

Japan: The two main reasons for our wishing to change this article are: (1) Such changes would conform to the provisions of the new diplomatic convention signed in Vienna in April 1961 and (2) Would set forth the status of honorary consuls in a clearer way. We consider our proposal for the new article on limitations a drafting rather than a substantive one.

US: You do not wish to extend privileges or immunities to U. S. consular employees in Japan who are Japanese nationals?

Japan: That is correct. If, for example, a consulate has an American driver, he would be excluded from Japanese jurisdiction for official acts but if the driver were Japanese he would be subject to Japanese jurisdiction. In the previous draft, if a consulate driver were a Japanese national his only privilege would be immunity from the jurisdiction of the Japanese courts with respect to acts done while on official duty for the consulate. This privilege is denied under our new proposal in Article 11 (1) (a). This is because, in view of the recently adopted Vienna Convention, we do not wish to give the driver of a consulate more privileges than the driver of an embassy.

US: Would you please clarify what you mean by the term "service staff" in this proposal? For example, would a cook be included as a member of the service staff?



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Japan: Before answering this, we would like to point out that the division in the categories of consular employees ( (1) administrative and technical staff and (2) service staff) as we propose in Article 2 (10) will effect certain changes in Articles 13 and 14 only of the convention. For example if a cook were employed by the consular office, rather than personally by a consular officer, he would be considered a member of the service staff and would be given certain privileges.

US: When you refer to staff officers in your new proposal for the rewording of the Agreed Official Minutes with respect to Article 2 (10), why do you use this term?

Japan: We use this term because this is wording used by the Embassy when informing us of the arrival of such officers in Japan. However, if this term is confusing we will eliminate it if you so desire.

US: We would prefer that it be left in for the time being.

Japan: Under what category would a person engaged in coding operations belong?

US: Normally, the U. S. practice is such that he would be classified as a clerk under administrative and technical services.

What do you mean by changes of a "substantial character" with reference to your comments on Article 3 (1) of the draft text?

Japan: Your proposal for changing this article would have made its meaning much more restrictive than it would be under our proposal.

US: This was the intention of our proposed change. The United States has found it necessary at certain times to order the closing of all consular offices of a foreign country and the Department believes that the wording of its proposed change would give each country greater flexibility in this regard and would avoid possible future misunderstandings.

Japan: Our objections are based on the principle of most favored nation treatment, which we desire be adopted. In those treaties of friendship, commerce and navigation containing consular clauses which we have concluded with several countries, there has always been a provision for most favored nation treatment. Because this will be the first consular convention made by Japan with a foreign country since the end of the war, we feel rather strongly that the principle of most favored nation treatment should be in this consular convention. We cannot foresee

any trouble arising between our two countries which would require the closing of each other's consulates, so we hope you can agree to our proposal under Article 3 (1).

US: In regard to Article 5 (3) of the draft text, the United States believes that the most favored nation principle introduces uncertainties into the convention. If it were included in this convention, it would provide for privileges embodied in older treaties which the U. S. would not wish to agree to at the present time. The most favored nation principle has also been eliminated ir the short form draft which sets forth the consular convention concept that the U. S. Government intends to follow in the future.

Japan: We wish to retain the most favored nation principle referred to in Article 5 (3), because, as already indicated, this principle is included in treaties of friendship, commerce and navigation which we have with other countries. We would therefore appreciate the Department's further views on this subject.

With respect to our desire to add another paragraph after Article 6 (3), to become Article 6 (4), the addition of this paragraph would benefit both our countries with respect to other countries. For example if Japan wished to limit the size of another country's consular office in another consular convention it could refer to this article in the U. S./Japan Consular Convention, if necessary, to explain its reason for doing so.

US: We notice that you have suggested either the inclusion of a new paragraph after Article 6 (3) or an Agreed Official Minute with respect to Article 6. Which would be more acceptable?

Japan: We would prefer to have the new paragraph (4) of Article 6.

With respect to Article 8 (3) (a), our proposal stems from what we consider the ambiguity of the term "kept in a consular office".

With respect to the proposed change of wording in Article 8 (4), is the term "crime of violence" a legal term?

US: Yes, we believe so. A crime of violence would cover both persons and property.

Japan: There is no precise rendition of "crime of violence" in the Japanese language so we believe the change to "a crime involving violence to persons or property" which we propose makes the term more susceptible to translation into Japanese.



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US: With respect to your desire to eliminate the second sentence of Article 9 (4), it seems to us from the content of this sentence, that its wording must have been the subject of lengthy discussions between the U. S. and Japanese sides. The principal merit of this sentence would seem to be its precision and detail.

Japan: In our treaties of friendship, commerce and navigation the situation covered by this sentence is simply that of agreeing to "pay due and prompt compensation" without going into detail. Representatives of the Ministry of Finance claim that this sentence is not technically adequate, and is too specific. These representatives also refer to the possibility of compensation in kind.

US: It seems to us that this sentence is highly desirable and provides the protection both sides would wish to have.

Japan: We nevertheless believe that it is too specific and we have also observed that the short form does not include such a sentence.

With respect to our proposed change in Article 11 (1) (a), the intention is to exclude from immunity those consular employees who are nationals of the receiving state.

We believe our proposed change in Article 11 (2) to be self-explanatory.

US: Yes, it seems self-explanatory.

The Agreed Official Minutes in Article 11 (1) (a) also appear to be self-explanatory.

With respect to your proposal in Article 12 (2), you apparently intend that this cover the entire article rather than just Article 12 (1) (d).

Japan: Yes. Article 12 refers to direct taxes whereas Article 12 (3) refers to indirect taxes. We do not want to define in this article whether taxes on electricity and gas are direct or indirect by referring to Article 12 (1).

In Article 12 (2) the term "career" which appears twice should be eliminated.

US: Does the Japanese Government follow the practice of having honorary consuls abroad who are nationals of the receiving state?

Japan: Yes.

US: We can foresee some difficulty with respect to your proposal for inclusion of an Agreed Official Minute concerning Article 13 (2) (a) which refers to the use of consular license plates, since they may not be available in all States of the United States. Can you give us some explanation why you desire this change?

Japan: We will study this matter further.

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Formal Resumption of US-Japan Consular Convention Negotiations
3rd Meeting, July 21, 1961, Kayu Kaikan, 2:00 p.m.

Japanese Delegation:

Mr. Fumihiko Togo, Deputy Director, Treaties Bureau
Mr. Motoo Ogiso, Chief, Legal Section, Treaties Bureau
Mr. Mitsuro Donowaki, Secretary, Legal Section
Mr. Gohachiro Shono, Secretary, Legal Section
Mr. Takeo Iguchi, Secretary, Treaties Section, Treaties Bureau
Mr. Keishiro Matsumura, Secretary, North American Section, American Affairs Bureau
Mr. Kumao Kaneko, Secretary, Legal Section
Miss Hisami Mano, Secretary, North American Section, American Affairs Bureau

American Delegation:

Mr. Ralph J. Blake, Counselor of Embassy
Mr. Harrison M. Holland, Second Secretary of Embassy

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Japan: We wish to change the wording of the preamble of Article 13 /(3)/ /(4)/ so as not to define the nature of the taxes (direct or indirect) listed in /(3)/ /(4)/ (a) through (f) in this paragraph. In the previous draft, the preamble made direct reference only to paragraph (2) (a) and as we consider the taxes referred to in paragraph (2) (a) to be direct taxes, the continued use of the wording proposed by the Department of State would tend to imply that all taxes listed in /(3)/ /(4)/ (a) through (f) are direct taxes. The Local Autonomy Ministry does not want to admit that taxes listed in (d) are direct taxes.

As to our request for a diesel oil delivery tax, this was proposed to us by the Local Autonomy Ministry after negotiations on the consular convention were suspended several years ago. The tax would apply not only to diesel oil for trucks and buses but also to fuel oil for heating.

US: We wish to point out that with the proposed elimination of paragraph 3 of Article 13, paragraph 4 will become paragraph 3. Also, the U. S. side has agreed to the inclusion of "taxes on electricity and gas" in 13 /(3)/ /(4)/ (d).

Japan: We are pleased that the United States has accepted this inclusion.



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US: Under Article 14 (2) are you proposing that customs privileges for consular employees be restricted to first entry?

Japan: Yes, in regard to technical and administrative employees, that is correct. And, in addition, there will be no privileges accorded members of the service staff.

US: Why do you propose this?

Japan: According to the Vienna Convention on Diplomatic Intercourse and Immunities, customs privileges are limited in a similar manner in respect to diplomatic employees. We cannot give more privileges to consular employees than to diplomatic employees.

US: What is the purpose for your suggested word change in Article 15 (4)?

Japan: We prefer not to refer to "the rights of a national" but rather to the "rights of a government" in this article as this convention will reflect the regulation of consular affairs between two governments.

US: We note that you have not included the concept expressed by the phrase "at all times" in your proposed redraft of Article 15 (4). This could be accomplished by inserting "at no time" between the words "state" and "shall" and eliminating the word "not" in the Japanese proposal.

Japan: This is agreeable.

US: Under Article 16 (1) we note that you have added the word "undue" to the phrase "without delay". Why do you wish to have the phrase read "without undue delay"?

Japan: This is a matter of taste. There might be circumstances under which minor delays would be unavoidably experienced and we feel that this should be provided for in the wording of the Article.

US: With respect to Article 17 (1) (e), we attach considerable importance to this paragraph. American consular officers in Japan may not now take depositions and the United States legal profession is most desirous that they be able to do so. Under the present system, letters rogatory accompanied by translations of documents from English into the Japanese are submitted through diplomatic channels to the appropriate court in Japan for action. This is a cumbersome procedure and, as indicated before, the U. S. legal profession would like to see it simplified.

Japan: We want to be informed whether under United States law a Japanese consular officer would be permitted to take depositions? We are presently studying this particular sub-paragraph with other ministries concerned.

US: We want to emphasize again the importance we attach to this particular point.

Japan: What do you mean by the word "evidence" in Article 17 (1) (e)?

US: We believe this would consist primarily of testimony or written materials voluntarily offered before a consular officer for use in court proceedings within the sending state. We do not conceive of evidence as normally being a physical object which would be removed from the receiving state. We also wish to emphasize that the taking of testimony, as allowed by this article, would be conducted on a voluntary basis and that no coercion would be used on a Japanese or U. S. national in obtaining testimony.

Japan: Would gathering evidence include taking testimony from an "expert witness"?

US: Yes, we believe so, if it were desired for use in judicial proceedings in the sending state.

Japan: Under Article 17 (4) (b) we cannot visualize any case falling within the provisions of this sub-paragraph. If the U. S. will indicate to us the need for this wording, however, we would have no objection to its retention.

With respect to your proposed new article to replace Articles 18, 19, and 20, we accept your proposal. However, we would prefer to use the wording of the preamble of paragraph (1) and its sub-paragraph (a) of old Article 18 for tl first paragraph of the new article because we feel that a consular officer should be informed of the death of a national of the sending state whether an heir or testamentary executor of the deceased is present or not. Furthermore, under the proposed wording in the first paragraph of the new Article, it would appear that local authorities would have to be constantly on watch beyond the normal call of their duties to report the deaths of nationals of the sending state. We believe that the wording "information normally available to them" used in paragraph 1 of the old Article 18 would be much better and would more accurately reflect the practicalities of the situation.

US: The Department has indicated that it prefers no modifications to be made to its new substitute article but it may be that the Department would not consider your word change a substantive one. We will transmit your views to the Department.

Under Article 21 (2), you desire to replace "invoke" by the word "request". The term invoke suggests that one is not only requesting but has some expectation that his request will be granted.

Japan: Although we do not feel too strongly on the point, we think that the word "invoke" is a bit unusual in this context. The point raised by the U. S. may be covered by the last clause of Article 21 (2). In Japanese, there is no precise translation for the word "invoke".

With respect to Article 22 (3), we desire to have the new wording, "arrange for the settlement of", added to this article because, under Japanese law, a consular officer has no power to "decide" disputes between a master of a vessel and members of its crew.

Under Article 23 (1), (2), and (3) we wish to make the changes noted (changing "territorial waters" to "internal waters") in order that the wording conform to the provisions of Article 19 of the Convention on the Law of the Sea adopted in Geneva in April 1958. We believe that provisions of this article are applicable only to vessels in ports or in the "internal" waters of the state concerned. In case of innocent passage, the receiving state cannot exercise its jurisdiction save in exceptional cases. There is no intention of altering Article 23 (1).

(Note. There is attached to these minutes a copy of a statement presented by the Japanese side to clarify its preference for the term "internal waters" rather than "territorial waters".)

With respect to Article 23 (2) (b) we believe the provisions of this sub-paragraph should not apply to nationals of the receiving state. If the member of the crew who is involved were a national of the receiving state, the receiving state would take jurisdiction even in the case of a minor offense.

US: With respect to the Agreed Official Minutes re Article 23 (2), what do you conceive to be an immigration crime or offense?

Japan: Smuggling someone out of a port would be an example.

The changes in Article 24 (1) are intended to make its meaning more specific.

With respect to our desire to add a new article after Article 25, we have borrowed the wording for this proposed new article from Article 7 (5) of the Short Form in which the word "aircraft" is equated to the term "vessel".

Our proposal regarding Article 26 (2) is intended to make its meaning more specific.

We desire that the Agreed Official Minutes regarding the consular convention, immediately following Article 27, become either a new paragraph in Article 26 or an independent article.

US: The former would seem more logical.

Japan: With respect to paragraph 2 of the Protocol in the original draft text, we wish to propose the following wording as a substitute for this paragraph:

> The term "nationals" in relation to Japan, referred to in sub-paragraph (3) (b) of Article 2 of the Convention, shall be deemed to include all native inhabitants of the area to which this Convention shall not apply in accordance with paragraph 1 of this Protocol. However, the right of Japanese consuls to represent Ryukyuans in the United States will not extend to those matters for which authorization from the appropriate authorities in the Ryukyu Islands would be required. The appropriate authorities of the two Governments will consult, whenever necessary, concerning the consular services provided for in this Convention to be rendered in the interests of the Ryukyuans in the United States.

If paragraph 2 were deleted in its entirety, a queer situation would arise with respect to the interpretation of Article 2, paragraph 3. For example, in Article 2 (3) (a), reference is made to "all persons under the protection of the United States" which, of course, means, among others, Okinawans, and also in Article 2 (3) (b), reference is made to "all persons possessing the nationality of Japan", which includes Okinawans as Japanese nationals. The remedy is to retain paragraph 2 of the Protocol but delete reference to "juridical entities".

Our proposal to append an Agreed Official Minute to paragraph 2 of the Protocol is withdrawn because we believe that an Okinawan, whether he has a Japanese passport, USCAR certificate, or both, should have the right, if he desires, to the protection of Japanese consular officers. We are anxious to work out some method whereby this can be accomplished. From the legal point of view we think that Okinawans do not receive as much protection under U. S. laws as Americans and we believe therefore that they are entitled to protection by Japan.

US: We believe there are provisions under U. S. procedures for the protection of Okinawans but we are uncertain as to the scope of this protection.

We will look into this matter further.

Japan: It is our understanding that Okinawans in the United States, who have Japanese passports, are receiving certain consular services from Japanese consular officers. This includes, among other things, registration of births for inclusion in the Japanese-type family census registers. We assume that if an Okinawan goes to the United States he could be treated, from the standpoint of consular services, as a Japanese national. At any rate we would like to see this convention contain some provision for allowing an Okinawan in the U. S. to receive consular services from a Japanese consular officer. We believe it is natural and right for an Okinawan, who carries a Japanese passport, and whom we assume the U. S. side considers a Japanese national, to receive such services. We believe the resolution of this problem will require a good deal of effort on both sides.

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Japanese statement to clarify proposals made under Article 23 (1), (2), and (3).

1. With respect to Paragraph (1) of Article 23, the Convention on the Territorial Sea does not recognize any such right of the coastal state as to settle wage disputes on a vessel while that vessel is making an innocent passage through its territorial sea.

2. With respect to Paragraph (2) of Article 23, the text appears to infer that the administrative and judicial authorities of the coastal state have the legal right to take cognizance of crimes or offences committed on board a vessel while she is in the territorial waters. However, the Convention on the Territorial Sea does not recognize such right with respect to foreign vessels which makes an innocent passage through the territorial sea save in exceptional cases.

3. Paragraph (2) of this Article may be interpreted as authorizing a coastal state to exercise its administrative and judicial power over crimes or offences of a serious character which takes place on board a vessel even if while she is making an innocent passage through its territorial waters. The Convention on the Territorial Sea does not recognize such right of a coastal state.

4. With respect to Paragraph (3) of Article 23, the master or other officer acting on his behalf is given the right to inform the consular officer about the exercise of power by the coastal state. However, the Convention on the Territorial Sea provides for the obligation of the coastal state to inform about it to the consular officer (not the right of the master to inform the consular officer), if the captain so requests.

5. In any case the Convention on the Territorial Sea was concluded in 1958 after the talks between the U. S. and Japan on the Consular Convention had been suspended in 1956.

Formal Resumption of US-Japan Consular Convention Negotiations
4th Meeting, July 24, 1961, Kayu Kaikan, 2:00 p.m.

Japanese Delegation:

Mr. Fumihiko Togo, Deputy Director, Treaties Bureau
Mr. Mitsuro Donowaki, Secretary, Legal Section
Mr. Takeo Iguchi, Secretary, Treaties Section, Treaties Bureau
Mr. Gonachiro Shono, Secretary, Legal Section
Mr. Keishiro Matsumura, Secretary, North American Section, American Affairs Bureau
Miss Hasami Mano, Secretary, North American Section, American Affairs Bureau

American Delegation:

Mr. Ralph J. Blake, Counselor of Embassy
Mr. Harrison M. Holland, Second Secretary of Embassy

Proceedings

US: With respect to paragraph 1 of your new Article on Limitations, would a U.S. citizen permanently residing in Japan who was newly employed by a U. S. Consulate, and whose name had been properly referred to the Foreign Ministry with respect to his employment, be eligible to have his status changed to that of a consular employee and thus not become liable to the provisions of this paragraph?

Japan: No.

US: With further respect to the proposed new Article on Limitations, your proposals in general call for the elimination of the terms "career consular employee" from the Consular Convention.

Japan: Yes, that is correct.

US: In connection with safeguards accorded consular officers and employees under Article 11, would the term "employee" in Article 11 (4) (b) also cover an employee who is a national of the receiving state?

Japan: Yes, that is correct.

In our new Article on Limitations, we have not changed the privileges and immunities of consular officers except with respect to Article 10 (1) where the word "career" has been eliminated, thus according to honorary consuls



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the privileges of this article. These privileges were not available to honorary consuls under the former draft text.

US: Why do you propose that Article 2 (9) be deleted?

Japan: It is no longer necessary inasmuch as we propose to delete the term "career officer" from the entire consular convention. However, with regard to the Agreed Official Minutes re Article 2 (11), if you believe it is necessary to retain this Minute, it should be retained as referring to Article 2 (10) rather than to Article 2 (11) as at present.

US: With respect to your proposal to make the last sentence of Article 11 (5) a new paragraph 6, why have you proposed this?

Japan: Because the last sentence of Article 11 (5) in its original form has reference to a new subject. For example, the first two sentences of Article 11 (5) discuss alien registration and the proposed new paragraph, which under the old draft was the last sentence of Article 11 (5), has reference to deportation. Inasmuch as the term "consular officer" in the last sentence of Article 11 (5) can refer to either "career consular officer" or "non-career consular officer" under the original draft and because we propose to eliminate the term "career" in the first sentence of Article 11 (5), we believe that to insure that proper immunities are accorded to consular officers with respect to deportation, we should make the last sentence paragraph 6 and make the present paragraph 6, paragraph 7.

US: Do we understand that you wish to delete paragraph /2/ /3/ of the Protocol?

Japan: We originally thought it should be deleted but after more reflection we believe it should be retained but should apply only to Article 13 (1). Permanent residents are subject to taxation of the State where they reside according to the provisions of treaties dealing with double taxation. However, Article 13 (1) provides for the exemption of such taxes. Such exemptions should not be extended to permanent residents. We therefore propose to retain paragraph /2/ /3/ but make it applicable only to Article 13 (1). The other Articles listed in this paragraph are covered by the new Article on Limitations.

In Article 21 (1), we propose to add the following words in paragraph 1 after the word "and" at the end of the third line and before the word "visit" at the beginning of the fourth line, "subject to immigration regulations of the receiving state".

US: How would this changed wording apply in practice?

Japan: We will attempt to obtain specific details for you but in general we can say that if a U. S. registered vessel entered a non-exit non-entry port, where landings by aliens are not permitted, a landing by the master or members of the crew would not be allowed except in case of emergency.

HMHolland/af

Formal Resumption of US-Japan Consular Convention Negotiations
5th Meeting, August 2, '961, Kayu Kaikan, 2:00 p.m.

Japanese Delegation:

Mr. Motoo Ogiso, Chief, Legal Section, Treaties Bureau, Ministry of Foreign Affairs
Mr. Hirshiko Otsuka, Secretary, Legal Section
Mr. Mitsuro Donowaki, Secretary, Legal Section
Mr. Gohachiro Shono, Secretary, Legal Section
Mr. Kumao Kaneko, Secretary, Legal Section
Mr. Takeo Iguchi, Secretary, Treaties Section, Treaties Bureau
Mr. Keijiro Matsumura, Secretary, North American Section, American Bureau
Miss Hisami Mano, Secretary, North American Section, American Bureau
Mr. Jiro Muraoka, Public Prosecutor, Civil Affairs Bureau, Ministry of Justice
Mr. Yoshiho Yasuhara, Public Prosecutor, Criminal Affairs Bureau, Ministry of Justice

Observers:
Mr. Koichi Nishimura, Chief, Second Section, Bureau of Civil Affairs, General Secretariat of Supreme Court
Mr. Taro Okubo, Acting Chief, Second Section, Bureau of Criminal Affairs, General Secretariat of Supreme Court

United States Delegation:

Mr. Ralph J. Blake, Counselor of Embassy
Mr. Harrison M. Holland, Second Secretary of Embassy

Proceedings

(Note. Before the meeting began, the Japanese side passed out a document which included a new proposal for Article 17 (1) (e) and several questions relating to Article 16 (1), 17 (1) (e) and the New Article on Property and Estates.)

Japan: Our purpose in proposing an amendment to Article 17 (1) (e) is to make provision in the Convention for the service of judicial documents by consular officers. We propose that 17 (1) (e) be amended to read as follows: "(e) (i) serve judicial documents, on behalf of the courts of the sending state upon, or (ii) take evidence, on behalf of the courts of the sending state, voluntarily given by, or (iii) administer oaths to any person in the receiving state in accordance with the laws of the sending state and in a manner not inconsistent with the laws of the receiving state;".

It is further proposed that the following Minute be appended to this sub-paragraph: "It is understood that (1) the service of subpoenas or show-cause orders by United States consuls in Japan shall not be made upon those persons who possess other nationalities than that of the U. S. A.; (2) the evidence to be taken by consuls shall include testimony given by expert witnesses, but shall not include any material evidence."

US: There is presently a de facto arrangement between the U. S. and Japan permitting Japanese consular officers in the United States to serve legal process on both Japanese nationals and American citizens. At one time, we believe, the Foreign Office took the position that Japanese consuls could not serve legal documents on non-Japanese nationals in the United States.

Japan: This, of course, has been changed and Japanese consular officers in the U. S. now serve legal process on both Japanese nationals and American citizens.

If we do not include this proposal concerning the service of legal process in this consular convention, it might be construed at a later time that consular officers have no legal right to serve legal documents.

We have discovered that the wording "in a manner not inconsistent with the laws of the receiving state" used in our proposal is also the same wording used in the U.S.-U.K. and U.S.-Ireland consular conventions.

US: With reference to paragraph 1 of your proposed new Minute to be appended to sub-paragraph 17 (1) (e), what you are proposing would not provide true reciprocity.

Even though United States regulations prohibit an American consul in Japan from serving legal process on a Japanese national, it is possible, if not probable, that the United States would nevertheless desire to have the principle of reciprocity recognized in the convention.

Japan: We have decided to withdraw paragraph 1 of the proposed new Minute.

US: What do you mean by the term "material evidence" in paragraph 2 of the proposed new Minute?

Japan: There is some difference of opinion among us concerning the meaning of this term so we would prefer to defer further discussion at this time.

US: With reference to your question concerning Article 16 (1), "may the Ministry understand that a consular officer, in exercising his right to converse privately with a national of the sending state as provided for in the second

sentence of this paragraph, will not be treated by the receiving state more favorably than an attorney at law?", we note that you appear to be equating attorneys and consuls with respect to the application of this particular article. In this connection we also note that under Article 39 of the Japanese Code of Criminal Procedure /see attachment hereto/ the right accorded defense counsel to see the accused is somewhat circumscribed. Is it your intention that the rights of consuls to see the accused would be circumscribed in like manner?

Japan: Yes, this is our intention.

US: We believe that the rights of a consul to see the accused should not be equated with or limited by rights granted defense counsel to see the accused.

Japan: The Criminal Code provides for the limitation of visits by a lawyer to the accused in order to insure that the accused will not escape or destroy evidence.

US: The United States would not want to be party to a suggestion that an American consul would aid or abet the escape of an arrested American in Japan or assist an arrested American in destroying evidence. Such action on the part of any consul would very likely subject him to the penalty of being declared persona non grata by the receiving state.

Japan: Does "converse privately" in the second sentence of Article 16 (1) mean that the consul and the accused would talk in a separate room?

US: Not necessarily. As long as the consul and the accused could discuss matters out of earshot of a prison guard or other third person we would consider this as being a private conversation.

Japan: If a consular officer desired to see the accused at night, would the authorities concerned be required to allow him to see the accused?

US: It would appear from the draft wording that this would be required.

Japan: We would like to defer further discussion of the questions raised here with reference to Article 16 (1) until a later date.

US: In Article 17 (1) (e) the answer to the first question, "Does the term 'courts of the sending state' include state courts as well as federal courts, with respect to the U. S. A.?", is yes.

The answer to the second question, "Does the term 'courts of the sending state' include, with respect to Japan, judges who act in accordance with

Articles 179 and 226 of the Japanese Code of Criminal Procedure?" is yes. (See attachment hereto.)

Japan: In the U. S.-U. K. and U. S.-German conventions reference is made to "special arrangements" to be established by both parties for the taking of evidence. Why did you not use the term "special arrangements" in this convention?

US: The reference to "special arrangements" was possibly not proposed in this convention for the same reason that the United States now prefers to use the so-called "short form" text. Experience has shown that the U. S. today cannot always agree to the same provisions that exist in former treaties. Experience has also shown that some of these provisions are presently unworkable.

Japan: In what manner would these "special arrangements" be promulgated? Also, we would like further details in this regard and a copy of any statement embodying the special arrangements that are in force for taking evidence.

US: The details of these special arrangements referred to in the U. S.-U. K. and U. S.-Germany conventions may possibly be set forth in an exchange of notes. We will try to obtain more information.

Japan: With respect to administering oaths, will the person taking the oath do so voluntarily?

US: Yes, that is correct. If it were done under duress the oath would have no value in a court of law.

Japan: What is the legal effect of an oath?

US: The legal effect is that evidence or testimony sworn to under oath becomes acceptable for use in court proceedings.

Japan: With respect to the new article on Property and Estates, paragraphs 2 (a) and 2(b), what is the difference between taking provisional custody of an estate and administering an estate?

US: If a national of the sending state dies in the receiving state under the circumstances described and leaves personal property such as, for example, clothes, negotiable assets, luggage, etc., a U. S. consul under existing U.S. regulations and in the capacity of a provisional conservator can take physical custody of this property with the intent that in due course the property will be released to an individual authorized to dispose finally of the property.

Administering an estate goes beyond the rights accorded a provisional conservator and is a function not normally exercised by a U. S. consul.

Under the draft proposal, however, a Japanese consular officer in the United States would be able to administer the property of a deceased Japanese national.

Paragraph 2 (a) is concerned with the preservation of the personal estate of a deceased pending its disposition and paragraph 2 (b) is concerned with the actual disposition of the estate.

Japan: Can the provisional conservator pay claims against the estate?

US: Yes, he can.

Japan: If he can, then there is very little distinction between provisional custody of an estate and administering an estate.

US: There is, at least, a fine distinction.

Japan: Why is the phrase "resident of ~~a~~ the receiving state at the time of death" used in 2 (b) and not in 2 (a)?

US: This question will be referred to the Department of State for clarification.

Japan: Is there any difference in the terms "personal property", "personal estate" and "estate" in paragraphs 2 (a) and 2 (b)?

US: With respect to the terms "personal property" and "personal estate" the meaning appears to be almost synonymous. However, with regard to the meaning of "estate", this apparently could cover real property as well as personal property.

We would like to point out that paragraph 4 of the proposed new Article on Estates provides ample safeguards concerning the actions of consular officers in taking custody of personal property and administering estates of deceased nationals.

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THE CODE OF CRIMINAL PROCEDURE

Article 39. The accused or the suspect placed under physical restraint in any way may, without having any official watchman present, have an interview with his defense counsel or any other person who is going to be his defense counsel upon request of the person who is entitled to select defense counsel (in case where a person other than an advocate is going to be selected as a defense counsel, this shall apply only after the permission prescribed in Paragraph 2, Article 31 has been obtained), and may deliver or receive any documents or any other things.

2. With regard to the interview and delivery or receipt of things mentioned in the preceding paragraph, such measures may be provided by law or ordinance (including the Rules of Court. The same shall apply hereinafter) as are necessary for preventing the escape of the accused or the suspect, the destruction or alteration of evidence, or the delivery or receipt of those things which may hinder the safe custody of the accused or the suspect.

3. The public prosecutor, public prosecutor's assistant officer and judicial police official (this includes both judicial police officer and constable. The same shall apply hereinafter) may, when it is necessary for investigation, designate the date, place and time of interview and deliver or receipt of things mentioned in Paragraph 1 only prior to the institution of prosecution, provided that such designation does not unreasonably hold the suspect in check when he exercises his rights for the defense.

Article 179. The accused, suspect, or his defense counsel may, when there are reasons which make it difficult to use evidences unless they are preserved in advance, only prior to the date for first public trial, request a judge to effect such dispositions as seizure, search, evidence by inspection, examination of witness or expert evidence.

2. The judge who has received the request prescribed in the preceding paragraph has the same power as a court or presiding judge has regarding the dispositions thereof.

Article 226. When a person who apparently possesses information essential to the investigation of a crime refuses to appear or disclose such information voluntarily at the examination in accordance with Paragraph 1, Article 223, the public prosecutor may request a judge to

interrogate him as a witness, only before the first date fixed for the public trial of the case.

(Article 223. A public prosecutor, public prosecutor's assistant officer and judicial police official may ask any person other than the suspect to appear in their offices, question him or request him to formulate an opinion as an expert or act as in interpreter or translator, if it is necessary for pursuing the criminal investigation.)

United States-Japan Consular Convention Negotiations
July 17 to August 2, 1961

## Article 1

(Second Meeting)

US: ..... with respect to your desire to eliminate Article 1 of the draft convention, what are your comments or views on this?

Japan: This article is not in itself objectionable. However, we may negotiate other consular conventions from time to time and might not wish to have such an article included in the convention. Unless you have pressing reasons for its retention, we would prefer that it be eliminated. We believe the only purpose served by its inclusion was to exclude the Canal Zone from the provisions of the Convention and this point is covered in a proposed amendment to the Protocol.

## Article 2 (10)

(Second Meeting)

US: What are your views with respect to Article 2(10) in which you have made certain suggestions with respect to redrafting of the sub-paragraph?

Japan: The two main reasons for our wishing to change this article are: (1) Such changes would conform to the provisions of the new diplomatic convention signed in Vienna in April 1961 and (2) Would set forth the status of honorary consuls in a clearer way. We consider our proposal for the new article on limitations a drafting rather than a substantive one.

US: You do not wish to extend privileges or immunities to U. S. consular employees in Japan who are Japanese nationals?

Japan: That is correct. If, for example, a consulate has an American driver, he would be excluded from Japanese jurisdiction for official acts but if the driver were Japanese he would be subject to Japanese jurisdiction. In the previous draft, if a consulate driver were a Japanese national his only privilege would be immunity from the jurisdiction of the Japanese courts with respect to acts done while on official duty for the consulate. This privilege is denied under our new proposal in Article 11(1)(a). This is because, in view of the recently adopted Vienna Convention, we do not wish to give the driver of a consulate more privileges than the driver of an embassy.

US: Would you please clarify what you mean by the term "service staff" in this proposal? For example, would a cook be included as a member of the service staff?

Japan: Before answering this, we would like to point out that the division in the categories of consular employees ((1) administrative and technical staff and (2) service staff) as we propose in Article 2(10) will effect certain changes in Articles 13 and 14 only of the convention. For example if a cook were employed by the consular office, rather than personally by a consular officer, he would be considered a member of the service staff and would be given certain privileges.

US: When you refer to staff officers in your new proposal for the rewording of the Agreed Official Minutes with respect to Article 2(10), why do you use this term?

Japan: We use this term because this is wording used by the Embassy when informing us of the arrival of such officers in Japan. However, if this term is confusing we will eliminate it if you so desire.

US: We would prefer that it be left in for the time being.

Japan: Under what category would a person engaged in coding operations belong?

US: Normally, the U. S. practice is such that he would be classified as a clerk under administrative and technical services.

## Article 3 (1)

(First Meeting)

Japan: In Article 3(1) of the draft text, is the Ministry correct in understanding that the second sentence of this paragraph does not exclude the establishment by the sending state of a branch office of a consulate general or a consulate?

US: We wish to defer consideration of this question pending review of applicable background material.

(Second Meeting)

US: With respect to the question relating to Article 3(1), this matter was the subject of a discussion between the Ministry and the Embassy in connection with the possible designation of certain American Cultural Centers in Japan as branch consular offices. The wording of this Article would



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probably not exclude the establishment of branch offices of a consulate or consulate general by the sending state.

Japan: We also interpret this provision as not excluding the establishment of such branch offices by the sending state.

(Second Meeting)

US: What do you mean by changes of a "substantial character" with reference to your comments on Article 3(1) of the draft text?

Japan: Your proposal for changing this article would have made its meaning much more restrictive than it would be under our proposal.

US: This was the intention of our proposed change. The United States has found it necessary at certain times to order the closing of all consular offices of a foreign country and the Department believes that the wording of its proposed change would give each country greater flexibility in this regard and would avoid possible future misunderstandings.

Japan: Our objections are based on the principle of most favored nation treatment, which we desire be adopted. In those treaties of friendship, commerce and navigation containing consular clauses which we have concluded with several countries, there has always been a provision for most favored nation treatment. Because this will be the first consular convention made by Japan with a foreign country since the end of the war, we feel rather strongly that the principle of most favored nation treatment should be in this consular convention. We cannot foresee any trouble arising between our two countries which would require the closing of each other's consulates, so we hope you can agree to our proposal under Article 3(1).

## Article 5 (3)

(Second Meeting)

US: In regard to Article 5(3) of the draft text, the United States believes that the most favored nation principle introduces uncertainties into the convention. If it were included in this convention, it would provide for privileges embodied in older treaties which the U. S. would not wish to agree to at the present time. The most favored nation principle has also been eliminated in the short form draft which sets forth the consular convention concept that the U. S. Government intends to follow in the future.

Japan: We wish to retain the most favored nation principle referred to in Article 5(3), because, as already indicated, this principle is included in treaties of friendship, commerce and navigation which we have with other countries. We would therefore appreciate the Department's further views on this subject.

## New Japanese Article 6 (4)

(Second Meeting)

Japan: With respect to our desire to add another paragraph after Article 6(3), to become Article 6(4), the addition of this paragraph would benefit both our countries with respect to other countries. For example if Japan wished to limit the size of another country's consular office in another consular convention it could refer to this article in the U. S./Japan Consular Convention, if necessary, to explain its reason for doing so.

US: We notice that you have suggested either the inclusion of a new paragraph after Article 6(3) or an Agreed Official Minute with respect to Article 6. Which would be more acceptable?

Japan: We would prefer to have the new paragraph (4) of Article 6.

## Article 8 (3) (a)

(Second Meeting)

Japan: With respect to Article 8 (3) (a), our proposal stems from what we consider the amiguity of the term "kept in a consular office".

## Article 8 (4)

(First Meeting)

Japan: Is the use of the term "probable" before "cause" in the second sentence of Article 8 (4) of the draft text appropriate?

US: The meaning of "probable" will have to be studied. However, a reasonable interpretation of the term would be "appropriate". As an example, if a consular office of the sending country were closed and a fire were to break out in the office, firemen of the receiving country would have "a probable cause" to enter the premises of the consular office to extinguish the fire.

Japan: Is there another appropriate word that could be used in place of "probable" and is there any significant legal interpretation of the meaning of the word "probable"?

US: We will study the precise meaning of this word further.

(Second Meeting)

US: With respect to the meaning of the term "probable cause" used in Article 8 (4), we have consulted a legal dictionary and believe the definition "having more evidence for than against" represents the essence of the meaning.

Japan: Translated into Japanese this would have the meaning "reasonable cause". Is this the same thing?

US: Yes, approximately the same.

(Second Meeting)

Japan: With respect to the proposed change of wording in Article 8 (4), is the term "crime of violence" a legal term?

US: Yes, we believe so. A crime of violence would cover both persons and property.

Japan: There is no precise rendition of "crime of violence" in the Japanese language so we believe the change to "a crime involving violence to persons or property" which we propose makes the term more susceptible to translation into Japanese.

## Article 9 (4)

(Second Meeting)

US: With respect to your desire to eliminate the second sentence of Article 9 (4), it seems to us from the content of this sentence, that its wording must have been the subject of lengthy discussions between the U. S. and Japanese sides. The principal merit of this sentence would seem to be its precision and detail.

Japan: In our treaties of friendship, commerce and navigation the situation covered by this sentence is simply that of agreeing to "pay due and prompt compensation" without going into detail. Representatives of the Ministry of Finance claim that this sentence is not technically adequate, and is too specific. These representatives also refer to the possibility of compensation in kind.

US: It seems to us that this sentence is highly desirable and provides the protection both sides would wish to have.

Japan: We nevertheless believe that it is too specific and we have also observed that the short form does not include such a sentence.



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Article 11 (1) (a)

(Second Meeting)

Japan: With respect to our proposed change in Article 11 (1) (a), the intention is to exclude from immunity those consular employees who are nationals of the receiving state.

Agreed Official Minutes - Article 11 (1) (a)

(Second Meeting)

US: The Agreed Official Minutes in Article 11 (1) (a) also appear to be self-explanatory.

Article 11 (2)

(Second Meeting)

Japan: We believe our proposed change in Article 11 (2) to be self-explanatory.

US: Yes, it seems self-explanatory.

Article 11 (4)

(First Meeting)

Japan: In Article 11 (4) (a) of the draft text, is the Ministry's understanding correct that the expression "in either a civil or a criminal case" does not exclude cases involving violations of the Immigration Control Order or of the Customs Law?

US: The expression in "either a civil or criminal case" would not exclude cases coming under the Immigration Control Order or Customs Laws. Such cases would be either civil or criminal, both of which are covered by the draft text.

Japan: Are cases involving violations of immigration control laws and customs laws considered criminal or civil violations?

US: It would depend on the circumstances; but probably most cases would be considered criminal cases when handled judicially. However, in

most cases where a consular officer would be asked to give testimony, with respect to violations of immigration or customs laws, it would be before an administrative rather than a judicial authority. The text indicates that receiving states may require foreign consuls to give testimony before administrative authorities.

## Article 12

(Second Meeting)

US: With respect to your proposal in Article 12 (2), you apparently intend that this cover the entire article rather than just Article 12 (1)(d).

Japan: Yes. Article 12 refers to direct taxes whereas Article 12 (3) refers to indirect taxes. We do not want to define in this article whether taxes on electricity and gas are direct or indirect by referring to Article 12 (1).

In Article 12 (2) the term "career" which appears twice should be eliminated.

US: Does the Japanese Government follow the practice of having honorary consuls abroad who are nationals of the receiving state?

Japan: Yes.

## Agreed Official Minutes - Article 13 (2) (a)

(Second Meeting)

US: We can foresee some difficulty with respect to your proposal for inclusion of an Agreed Official Minute concerning Article 13 (2) (a) which refers to the use of consular license plates, since they may not be available in all States of the United States. Can you give us some explanation why you desire this change?

Japan: We will study this matter further.

## Article 13 [(3)] [(4)]

(Third Meeting)

Japan: We wish to change the wording of the preamble of Article 13 [(3)]/[(4)] so as not to define the nature of the taxes (direct or indirect)



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listed in [(3)]/[(4)]/ (a, through (f) in this paragraph. In the previous draft, the preamble made direct reference only to paragraph (2)(a) and as we consider the taxes referred to in paragraph (2)(a) to be direct taxes, the continued use of the wording proposed by the Department of State would tend to imply that all taxes listed in [(3)]/[(4)]/ (a) through (f) are direct taxes. The Local Autonomy Ministry does not want to admit that taxes listed in (d) are direct taxes.

As to our request for a diesel oil delivery tax, this was proposed to us by the Local Autonomy Ministry after negotiations on the consular convention were suspended several years ago. The tax would apply not only to diesel oil for trucks and buses but also to fuel oil for heating.

US: We wish to point out that with the proposed elimination of paragraph 3 of Article 13, paragraph 4 will become paragraph 3. Also, the U. S. side has agreed to the inclusion of "taxes on electricity and gas" in 13 [(3)]/[(4)]/ (d).

Japan: We are pleased that the United States has accepted this inclusion.

## Article 14 (2)

(Third Meeting)

US: Under Article 14 (2) are you proposing that customs privileges for consular employees be restricted to first entry?

Japan: Yes, in regard to technical and administrative employees, that is correct. And, in addition, there will be no privileges accorded members of the service staff.

US: Why do you propose this?

Japan: According to the Vienna Convention on Diplomatic Intercourse and Immunities, customs privileges are limited in a similar manner in respect to diplomatic employees. We cannot give more privileges to consular employees than to diplomatic employees.

## Article 15 (4)

(Third Meeting)

US: What is the purpose for your suggested word change in Article 15 (4)?

Japan: We prefer not to refer to "the rights of a national" but rather to the "rights of a government" in this article as this convention will reflect the regulation of consular affairs between two governments.

US: We note that you have not included the concept expressed by the phrase "at all times" in your proposed redraft of Article 15 (4). This could be accomplished by inserting "at no time" between the words "state" and "shall" and eliminating the word "not" in the Japanese proposal.

Japan: This is agreeable.

## Article 16 (1)

(Third Meeting)

US: Under Article 16 (1) we note that you have added the word "undue" to the phrase "without delay". Why do you wish to have the phrase read "without undue delay"?

Japan: This is a matter of taste. There might be circumstances under which minor delays would be unavoidably experienced and we feel that this should be provided for in the wording of the Article.

(Fifth Meeting - see introductory note on page 22 of Enclosure No. 1)

US: With reference to your question concerning Article 16 (1), "may the Ministry understand that a consular officer, in expercising his right to converse privately with a national of the sending state as provided for in the second sentence of this paragraph, will not be treated by the receiving state more favorably than an attorney at law?", we note that you appear to be equating attorneys and consuls with respect to the application of this particular article. In this connection we also note that under Article 39 of the Japanese Code of Criminal Procedure /see pages 27-28 of Enclosure No. 1/ the right accorded defense counsel to see the accused is somewhat circumscribed. Is it your intention that the rights of consuls to see the accused would be circumscribed in like manner?

Japan: Yes, this is our intention.

US: We believe that the rights of a consul to see the accused should not be equated with or limited by rights granted defense counsel to see the accused.

Japan: The Criminal Code provides for the limitation of visits by a lawyer to the accused in order to insure that the accused will not escape or destroy evidence.

US: The United States would not want to be party to a suggestion that an American consul would aid or abet the escape of an arrested American in Japan or assist an arrested American in destroying evidence. Such action on the part of any consul would very likely subject him to the penalty of being declared persona non grata by the receiving state.

Japan: Does "converse privately" in the second sentence of Article 16 (1) mean that the consul and the accused would talk in a separate room?

US: Not necessarily. As long as the consul and the accused could discuss matters out of earshot of a prison guard or other third person we would consider this as being a private conversation.

Japan: If a consular officer desired to see the accused at night, would the authorities concerned be required to allow him to see the accused?

US: It would appear from the draft wording that this would be required.

Japan: We would like to defer further discussion of the questions raised here with reference to Article 16 (1) until a later date.

## Article 17 (1) (b)

(First Meeting)

Japan: In Article 17 (1) (b) of the draft text, will the medical examination referred to in this sub-paragraph be conducted on persons who possess double nationalities of both Japan and the United States and will the medical examinations be carried out compulsorily?

US: In the case of a person present in Japan with such dual nationality, the U. S. could not claim exclusive jurisdiction and if the individual concerned or the Japanese authorities objected to a medical examination for U.S. Selective Service or other purposes the U. S. would have to heed this objection. The U. S. cannot forcibly require a U. S. citizen residing abroad to take a medical examination.

## Article 17 (1) (e)

(Third Meeting)

US: With respect to Article 17 (1) (e), we attach considerable importance to this paragraph. American consular officers in Japan may not now take depositions and the United States legal profession is most desirous that they be able to do so. Under the present system, letters rogatory

accompanied by translations of documents from English into the Japanese are submitted through diplomatic channels to the appropriate court in Japan for action. This is a cumbersome procedure and, as indicated before, the U. S. legal profession would like to see it simplified.

Japan: We want to be informed whether under United States law a Japanese consular officer would be permitted to take depositions? We are presently studying this particular sub-paragraph with other ministries concerned.

US: We want to emphasize again the importance we attach to this particular point.

Japan: What do you mean by the word "evidence" in Article 17 (1) (e)?

US: We believe this would consist primarily of testimony or written materials voluntarily offered before a consular officer for use in court proceedings within the sending state. We do not conceive of evidence as normally being a physical object which would be removed from the receiving state. We also wish to emphasize that the taking of testimony, as allowed by this article, would be conducted on a voluntary basis and that no coercion would be used on a Japanese or U. S. national in obtaining testimony.

Japan: Would gathering evidence include taking testimony from an "expert witness"?

US: Yes, we believe so, if it were desired for use in judicial proceedings in the sending state.

(Fifth Meeting - see introductory note on page 22 of Enclosure No. 1)

Japan: Our purpose in proposing an amendment to Article 17 (1) (e) is to make provision in the Convention for the service of judicial documents by consular officers. We propose that 17 (1) (e) be amended to read as follows: "(e)(i) serve judicial documents, on behalf of the courts of the sending state upon, or (ii) take evidence, on behalf of the courts of the sending state, voluntarily given by, or (iii) administer oaths to any person in the receiving state in accordance with the laws of the sending state and in a manner not inconsistent with the laws of the receiving state;".

It is further proposed that the following Minute be appended to this sub-paragraph: "It is understood that (1) the service of subpoenas or show-cause orders by United States consuls in Japan shall not be made upon those persons who possess other nationalities than that of the U.S.A.; (2) the evidence to be taken by consuls shall include testimony given by expert witnesses, but shall not include any material evidence."

US: There is presently a de facto arrangement between the U. S. and Japan permitting Japanese consular officers in the United States to serve legal process on both Japanese nationals and American citizens. At one

time, we believe, the Foreign Office took the position that Japanese consuls could not serve legal documents on non-Japanese nationals in the United States.

Japan: This, of course, has been changed and Japanese consular officers in the U. S. now serve legal process on both Japanese nationals and American citizens.

If we do not include this proposal concerning the service of legal process in this consular convention, it might be construed at a later time that consular officers have no legal right to serve legal documents.

We have discovered that the wording "in a manner not inconsistent with the laws of the receiving state" used in our proposal is also the same wording used in the U.S.-U.K. and U.S.-Ireland consular conventions.

US: With reference to paragraph 1 of your proposed new Minute to be appended to sub-paragraph 17 (1) (e), what you are proposing would not provide true reciprocity.

Even though United States regulations prohibit an American consul in Japan from serving legal process on a Japanese national, it is possible, if not probable, that the United States would nevertheless desire to have the principle of reciprocity recognized in the convention.

Japan: We have decided to withdraw paragraph 1 of the proposed new Minute.

US: What do you mean by the term "material evidence" in paragraph 2 of the proposed new Minute?

Japan: There is some difference of opinion among us concerning the meaning of this term so we would prefer to defer further discussion at this time.

(Fifth Meeting)

US: In Article 17 (1) (e) the answer to the first question, "Does the term 'courts of the sending state' include state courts as well as federal courts, with respect to the U. S. A.?", is yes.

The answer to the second question "Does the term 'courts of the sending state' include, with respect to Japan, judges who act in accordance with Article 179 and 226 of the Japanese Code of Criminal Procedure?" is yes. (See pages 27-28 of Enclosure No. 1).

Japan: In the U.S.-U.K. and U.S.-German conventions reference is made to "special arrangements" to be established by both parties for the taking of evidence. Why did you not use the term "special arrangements" in this convention?

US: The reference to "special arrangements" was possibly not proposed in this convention for the same reason that the United States now prefers to use the so-called "short form" text. Experience has shown that the U. S. today cannot always agree to the same provisions that exist in former treaties. Experience has also shown that some of these provisions are presently unworkable.

Japan: In what manner would these "special arrangements" be promulgated? Also, we would like further details in this regard and a copy of any statement embodying the special arrangements that are in force for taking evidence.

US: The details of these special arrangements referred to in the U.S.-U.K. and U.S.-Germany conventions may possibly be set forth in an exchange of notes. We will try to obtain more information.

Japan: With respect to administering oaths, will the person taking the oath do so voluntarily?

US: Yes, that is correct. If it were done under duress the oath would have no value in a court of law.

Japan: What is the legal effect of an oath?

US: The legal effect is that evidence or testimony sworn to under oath becomes acceptable for use in court proceedings.

## Article 17 (1) (f)

(First Meeting)

Japan: In Article (17) (1) (f), what does the term "public registry" specifically mean?

US: The words "documents of public registry" have reference to documents recorded by an appropriate local official for public use. For example, vital statistics concerning births, deaths, marriages, divorces, and so forth, or documents that are registered pertaining to title to property would be included within this definition.

Japan: Would such public registry include a record of Diet proceedings?

US: The key word is "public" and, as mentioned beofre, has reference to the registry of documents by appropriate local officials.

Article 17 (4) (b)

(Third Meeting)

Japan: Under Article 17 (4) (b) we cannot visualize any case falling within the provisions of this sub-paragraph. If the U. S. will indicate to us the need for this wording, however, we would have no objection to its retention.

New United States Article on Estates and Transfer of Property

(First Meeting)

Japan: In the new article of the draft text which substitutes for Articles 18, 19, and 20, we wondered about the relationship between sub-paragraphs (a) and (b) of paragraph 2 and about whether the terms "personal property" and "personal estate" which appear in sub-paragraph (a) mean the same thing. However we feel that discussion of these points should be deferred until a representative of the Ministry of Justice is present.

US: This is agreeable.

(Third Meeting)

Japan: With respect to your proposed new article to replace Articles 18, 19, and 20, we accept your proposal. However, we would prefer to use the wording of the preamble of paragraph (1) and its sub-paragraph (a) of old Article 18 for the first paragraph of the new article because we feel that a consular officer should be informed of the death of a national of the sending state whether an heir or testamentary executor of the deceased is present or not. Furthermore, under the proposed wording in the first paragraph of the new Article, it would appear that local authorities would have to be constantly on watch beyond the normal call of their duties to report the deaths of nationals of the sending state. We believe that the wording "information normally available to them" used in paragraph 1 of the old Article 18 would be much better and would more accurately reflect the practicalities of the situation.

US: The Department has indicated that it prefers no modifications to be made to its new substitute article but it may be that the Department would not consider your word change a substantive one. We will transmit your views to the Department.

(Fifth Meeting)

Japan: With respect to the new article on Property and Estates, paragraphs 2(a) and 2(b), what is the difference between taking provisional custody of an estate and administering an estate?



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US: If a national of the sending state dies in the receiving state under the circumstances described and leaves personal property such as, for example, clothes, negotiable assets, luggage, etc., a U. S. consul under existing U.S. regulations and in the capacity of a provisional conservator can take physical custody of this property with the intent that in due course the property will be released to an individual authorized to dispose finally of the property. Administering an estate goes beyond the rights accorded a provisional conservator and is a function not normally exercised by a U. consul.

Under the draft proposal, however, a Japanese consular officer in the United States would be able to administer the property of a deceased Japanese national.

Paragraph 2(a) is concerned with the preservation of the personal estate of a deceased pending its disposition and paragraph 2(b) is concerned with the actual disposition of the estate.

Japan: Can the provisional conservator pay claims against the estate?

US: Yes, he can.

Japan: If he can, then there is very little distinction between provisional custody of an estate and administering an estate.

US: There is, at least, a fine distinction.

Japan: Why is the phrase "resident of the receiving state at the time of death" used in 2(b) and not in 2(a)?

US: This question will be referred to the Department of State for clarification.

Japan: Is there any difference in the terms "personal property", "personal estate" and "estate" in paragraphs 2(a) and 2(b)?

US: With respect to the terms "personal property" and "personal estate" the meaning appears to be almost synonymous. However, with regard to the meaning of "estate", this apparently could cover real property as well as personal property.

We would like to point out that paragraph 4 of the proposed new Article on Estates provides ample safeguards concerning the actions of consular officers in taking custody of personal property and administering estates of deceased nationals.



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Article 21 (1)

(First Meeting)

Japan: Under Article 21 (1), if the provisions of the Immigration Control Order of Japan were applied, the privileges granted to seamen in this paragraph would be modified. For example, would a master of a vessel and crew members be able to leave the vessel and proceed to the office of the consul to discuss a problem? Under the Japanese Immigration Control Order, such a departure from a vessel would be considered a "landing" in Japan by aliens. In certain ports open to shipping but closed to immigration a landing is prohibited under the Order. The term "visit" in the first sentence of Article 21 (1) is the point at issue in interpreting this sentence.

US: Under U. S. procedures, it would be considered that a master and the members of the crew of a vessel should have the right to visit their consul if necessary. Was the immigration order prohibiting this promulgated before or after the Japanese and the U. S. sides had agreed on the wording for this particular article?

Japan: It was promulgated before the present draft text had been agreed upon. It is suggested that the whole matter be deferred until a later time.

(Fourth Meeting)

Japan: In Article 21 (1), we propose to add the following words in paragraph 1 after the word "and" at the end of the third line and before the word "visit" at the beginning of the fourth line, "subject to immigration regulations of the receiving state".

US: How would this changed wording apply in practice?

Japan: We will attempt to obtain specific details for you but in general we can say that if a U. S. registered vessel entered a non-exit non-entry port, where landings by aliens are not permitted, a landing by the master or members of the crew would not be allowed except in case of emergency.

Article 21 (2)

(Third Meeting)

US: Under Article 21 (2), you desire to replace "invoke" by the word "request". The term invoke suggests that one is not only requesting but has some expectation that his request will be granted.

Japan: Although we do not feel too strongly on the point, we think that the word "invoke" is a bit unusual in this context. The point raised by



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the U. S. may be covered by the last clause of Article 21 (2). In Japanese there is no precise translation for the word "invoke".

## Article 22 (3)

(First Meeting)

Japan: In Article 22 (3), of the draft text, the powers of consuls to "arrange for the engagement and discharge of the master and members of the crew" in this paragraph would conflict with the domestic laws of Japan if exercised by American consuls in Japan. According to Article 33 of the Seamen's Employment Security Law of Japan, no one other than the Government is permitted, in principle, to engage in the business of finding employment for seamen. What does the expression "arrange for the discharge" exactly mean?

US: The wording in the text is innocuous. A consul would not engage in the business of finding employment for seamen but would attempt to repatriate those of his own nationality who are stranded within the area of his jurisdiction. The consul would not solicit employment for a U. S. seaman, other than in compliance with U. S. statutory requirements. In connection with the term "arrange for discharge", if a seaman is discharged abroad from a vessel of U.S. registry it must normally be done before an American consul under U. S. law.

(Third Meeting)

Japan: With respect to Article 22 (3), we desire to have the new wording, "arrange for the settlement of", added to this article because, under Japanese law, a consular officer has no power to "decide" disputes between a master of a vessel and members of its crew.

## Article 23

(First Meeting)

Japan: In Article 23 (1) of the draft text, is it appropriate to use the term "the master" in the passage which reads "contracts of service between the master and members of the crew", in the second sentence of this paragraph? It may well be replaced by such expression as "the owner of the vessel or his agent."

US: When a vessel of U. S. registry sails from a U. S. port an agreement called the Shipping Articles is drawn up in which the master of the vessel is the party of the first part and the seamen are the parties of

the second part. Thus, the master acts on behalf of the owners or operators in the capacity of the latter's agent and the term "master" in the draft text is therefore appropriate.

(Third Meeting)

Japan: Under Article 23 (1), (2), and (3) we wish to make the changes noted (changing "territorial waters" to "internal waters") in order that the wording conform to the provisions of Article 19 of the Convention on the Law of the Sea adopted in Geneva in April 1958. We believe that provisions of this article are applicable only to vessels in ports or in the "internal" waters of the state concerned. In case of innocent passage, the receiving state cannot exercise its jurisdiction save in exceptional cases. There is no intention of altering Article 23 (1).

(Note. There is attached to these minutes [see page 18 of Enclosure No. 1] a copy of a statement presented by the Japanese side to clarify its preference for the term "internal waters" rather than "territorial waters".)

With respect to Article 23 (2) (b) we believe the provisions of this sub-paragraph should not apply to nationals of the receiving state. If the member of the crew who is involved were a national of the receiving state, the receiving state would take jurisdiction even in the case of a minor offense.

US: With respect to the Agreed Official Minutes re Article 23 (2), what do you conceive to be an immigration crime or offense?

Japan: Smuggling someone out of a port would be an example.

## Article 24 (1)

(Third Meeting)

Japan: The changes in Article 24 (1) are intended to make its meaning more specific.

## New Japanese Article on Aircraft

(Third Meeting)

Japan: With respect to our desire to add a new article after Article 25, we have borrowed the wording for this proposed new article from Article

7 (5) of the Short Form in which the word "aircraft" is equated to the term "vessel".

## Article 26 (2)

(Third Meeting)

Japan: Our proposal regarding Article 26(2) is intended to make its meaning more specific.

## New Paragraph (3) of Article 26

(Third Meeting)

Japan: We desire that the Agreed Official Minutes regarding the consular convention, immediately following Article 27, become either a new paragraph in Article 26 or an independent article.

US: The former would seem more logical.

## Protocol

(Third Meeting)

Japan: With respect to paragraph 2 of the Protocol in the original draft text, we wish to propose the following wording as a substitute for this paragraph:

> The term "nationals" in relation to Japan, referred to in sub-paragraph (3)(b) of Article 2 of the Convention, shall be deemed to include all native inhabitants of the area to which this Convention shall not apply in accordance with paragraph 1 of this Protocol. However, the right of Japanese consuls to represent Ryukyuans in the United States will not extend to those matters for which authorization from the appropriate authorities of the Ryukyu Islands would be required. The appropriate authorities of the two Governments will consult, whenever necessary, concerning the consular services provided for in this Convention to be rendered in the interests of the Ryukyuans in the United States.

If paragraph 2 were deleted in its entirety, a queer situation would arise with respect to the interpretation of Article 2, paragraph 3. For example, in Article 2(3)(a), reference is made to "all persons under

the protection of the United States" which, of course, means, among others, Okinawans, and also in Article 2 (3) (b), reference is made to "all persons possessing the nationality of Japan", which includes Okinawans as Japanese nationals. The remedy is to retain paragraph 2 of the Protocol but delete reference to "juridical entities".

Our proposal to append an Agreed Official Minute to paragraph 2 of the Protocol is withdrawn because we believe that an Okinawan, whether he has a Japanese passport, USCAR certificate, or both, should have the right, if he desires, to the protection of Japanese consular officers. /The original Japanese version of Enclosure No. 3 included the following proposal: "The Ministry is ready to append an Agreed Official Minute to this paragraph stipulating that, for practical purposes, only those Okinawans to whom Japanese passports have been issued would be given protection by the Japanese consuls in the United States of America."/ We are anxious to work out some method whereby this can be accomplished. From the legal point of view we think that Okinawans do not receive as much protection under U. S. laws as Americans and we believe therefore that they are entitled to protection by Japan.

US: We believe there are provisions under U. S. procedures for the protection of Okinawans but we are uncertain as to the scope of this protection. We will look into this matter further.

Japan: It is our understanding that Okinawans in the United States, who have Japanese passports, are receiving certain consular services from Japanese consular officers. This includes, among other things, registration of births for inclusion in the Japanese-type family census registers. We assume that if an Okinawan goes to the United States he could be treated, from the standpoint of consular services, as a Japanese national. At any rate we would like to see this convention contain some provision for allowing an Okinawan in the U. S. to receive consular services from a Japanese consular officer. We believe it is natural and right for an Okinawan, who carries a Japanese passport, and whom we assume the U. S. side considers a Japanese national, to receive such services. We believe the resolution of this problem will require a good deal of effort on both sides.

## New Japanese Article on Limitations

(Fourth Meeting)

US: With respect to paragraph 1 of your new Article on Limitations, would a U.S. citizen permanently residing in Japan who was newly employed by a U.S. Consulate, and whose name had been properly referred to the Foreign Ministry with respect to his employment, be eligible to have his status changed to that of a consular employee and thus not become liable to the provisions of this paragraph?



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Japan: No.

US: With further respect to the proposed new Article on Limitations, your proposals in general call for the elimination of the terms "career consular employee" from the Consular Convention.

Japan: Yes, that is correct.

US: In connection with safeguards accorded consular officers and employees under Article 11, would the term "employee" in Article 11 (4) (b) also cover an employee who is a national of the receiving state?

Japan: Yes, that is correct.

In our new Article on Limitations, we have not changed the privileges and immunities of consular officers except with respect to Article 10 (1) where the word "career" has been eliminated, thus according to honorary consuls the privileges of this article. These privileges were not available to honorary consuls under the former draft text.

US: Why do you propose that Article 2 (9) be deleted?

Japan: It is no longer necessary inasmuch as we propose to delete the term "career officer" from the entire consular convention. However, with regard to the Agreed Official Minutes re Article 2 (11), if you believe it is necessary to retain this Minute, it should be retained as referring to Article 2 (10) rather than to Article 2 (11) as at present.

US: With respect to your proposal to make the last sentence of Article 11 (5) a new paragraph 6, why have you proposed this?

Japan: Because the last sentence of Article 11 (5) in its original form has reference to a new subject. For example, the first two sentences of Article 11 (5) discuss alien registration and the proposed new paragraph, which under the old draft was the last sentence of Article 11 (5), has refence to deportation. Inasmuch as the term "consular officer" in the last sentence of Article 11 (5) can refer to either "career consular officer" or "non-career consular officer" under the original draft and because we propose to eliminate the term "career" in the first sentence of Article 11 (5), we believe that to insure that proper immunities are accorded to consular officers with respect to deportation, we should make the last sentence paragraph 6 and make the present paragraph 6 paragraph 7.

US: Do we understand that you wish to delete paragraph [2713] of the Protocol?

Japan: We originally thought it should be deleted but after more reflection we believe it should be retained but should apply only to Article 13 (1). Permanent residents are subject to taxation of the State where they reside



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according to the provisions of treaties dealing with double taxation. However, Article 13 (1) provides for the exemption of such taxes. Such exemptions should not be extended to permanent residents. We therefore propose to retain paragraph [2][3] but make it applicable only to Article 13 (1). The other Articles listed in this paragraph are covered by the new Article on Limitations.

RJBlake:mti

Views of the Japanese Government on the text of the proposed Consular Convention between Japan and the United States of America

July 17, 1961

(Note)

The following views are based on the text of the Convention and Notes attached thereto prepared by the Embassy of the United States of America and furnished to the Ministry of Foreign Affairs in April, 1961. In the light of the comparatively long period that has elapsed since the suspension of the previous talks, the Ministry found it desirable to refer to some of the Articles to which the Embassy's Notes did not make any reference. For convenience, the Ministry took the liberty of arranging its comments in the order of the draft Articles and of classifying them under the heading in parentheses of either (New Proposal) or (Embassy's Note), the latter indicating result of the study by the Japanese side of the Embassy's Note to the relevant Article of the text. An exception to this classification is the Ministry's suggestion for the insertion of a new Article on Limitations similar to Article 15 of the Short Form furnished to the Ministry by the Embassy in November, 1960. Changes which would follow as a result of the insertion of this Article are grouped together and placed at the end of this paper under the heading of New Article on Limitations.

Article 1

(New Proposal) It is suggested that this Article be deleted in view of the fact that it is not indispensable to this Convention. In consequence, a slight modification will also be suggested with respect to paragraph (1) of the Protocol appended to this convention.

Article 2 (10)

(Embassy's Note) The Ministry agrees with the Embassy's suggestion to delete the sentence in brackets.

(New Proposal) It is suggested, however, that the remaining part of this sub-paragraph be redrafted as follows:

"The term 'consular employee' means any individual, other than a consular officer, who performs administrative or technical work or



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belongs to the service staff of a consular office provided that his name has been duly communicated to the appropriate authorities of the receiving state in accordance with the provisions of paragraph (2) of Article 6."

/Agreed Official Minutes re Article 2 (10)/

(Embassy's Note) The Ministry is ready to accept the Embassy's suggestion to delete this Minute.

(New Proposal) It is suggested that the following Minute re Article 2 (10) be agreed upon:

"It is understood that the administrative or technical staff consists of staff officers, clerks, and typists, and that the service staff consists of telephone operators, consular guards, messengers, drivers, and those in charge of the upkeep, or of the domestic duties, of the consular office."

Article 3 (1) — /(3)/ /(4)/

(Embassy's Note) The Ministry prefers the original wording of this Article to the new wording proposed by the Embassy. Particularly, the suggested alteration in paragraph (2) involves changes not only of drafting, but also of substantial character.

Article 5 (1)

(Embassy's Note) The Ministry is ready to accept the Embassy's suggestion.

Article 5 /(3)/

(Embassy's Note) The Ministry prefers to retain this paragraph. In case greater privileges and immunites are to be granted to consuls of a third state in virtue of a bilateral treaty between the third state and either of the Contracting Parties, the provisions of this paragraph would ensure that such privileges and immunities are granted to consuls of the other Contracting Party.

New Paragraph to be added after Article 6 (3)

(New Proposal) In view of the provisions of Article 11, Paragraph 1 of the Vienna Convention on Diplomatic Relations adopted on April 18, 1961, and also of Article 22 of the draft articles on Consular Intercourse

and Immunities adopted by the International Law Commission at its twelfth session, it is suggested that the following paragraph be added as a new paragraph (4) of Article 6.

"The receiving state may refuse to accept a size of the consular staff exceeding what is reasonable and normal having regard to circumstances and conditions in the consular district, and to the needs of the particular consulate."

Alternatively, it is suggested that the following Minute re Article 6 be agreed upon:

"It is understood that the sending state shall not appoint or employ a number of consular officers or employees exceeding what is reasonable and normal, having regard to circumstances and conditions in the consular district and as to the needs of the particular consulate."

Article 8 (3) (a)

(New Proposal) It is suggested that the beginning part of this sub-paragraph be amended as follows:

"The archives of the consular office shall at all time be ....."

Article 8 (4)

(New Proposal) It is suggested that the words "a crime of violence" which appear in the second sentence of this paragraph be replaced by the following words:

"a crime involving violence to persons or property."

Article 9 (4)

(New Proposal) It is suggested that the whole second sentence be deleted.

Article 10 (3)

(Embassy's Note) The Ministry is ready to accept the Embassy's suggestion.

Article 11 (1) (a)

(New Proposal) It is suggested that the beginning part of this sub-paragraph be amended as follows:

"A consular officer, or a consular employee who is not a national of the receiving state, shall not, except with ....."

According to Article 38, paragraph 2 of the Vienna Convention on Diplomatic Relations the employees of diplomatic missions who are nationals of the receiving do not necessarily enjoy immunity from the jurisdiction of the receiving state.

(New Proposal) It is also suggested that the comma between the words "official capacity" and "falling within" be replaced by "and".

New Paragraph to be added after Article 11 (2)

(New Proposal) In view of the provisions of Article 37, paragraph 4 of the Vienna Convention on Diplomatic Relations, it is proposed that the following paragraph be added after Article 11 (2) as a new paragraph:

"When the receiving state is permitted to exercise its jurisdiction over a consular officer or employee in virtue of the provisions of preceding paragraphs, it must exercise its jurisdiction in such a manner as not to interfere unduly with the performance of the functions of a consular office."

Agreed Official Minutes re Article 11 (1) (a)

(New Proposal) It is suggested that the following Minute re Article 11 (1) (a) be agreed upon:

"It is understood that the consent of the sending state referred to in Article 11 (1) (a) shall be notified to the receiving state in writing through diplomatic channel."

Article 12 /(2)/

(Embassy's Note) As pointed out by the Embassy, the words "by the sending state" in sub-paragraph (a) (i) have been erroneously omitted in the Ministry's earlier draft.

(New Proposal) It is suggested that the beginning part of this paragraph be amended as follows:

"No provisions of this Article shall be construed to accord ....."

Article 12 [(2)] [(3)]

(Embassy's Note) The Ministry is ready to accept the Embassy's suggestion to add the letter "s" to the word "exemption" in this paragraph.

Article 12

(New Proposal) As the Ministry is further studying this Article with other Ministries concerned, it may submit a new proposal at a later stage.

Article 13 (2) (a)

(New Proposal) It is suggested that the beginning part of this sub-paragraph be amended as follows:

"A consular officer, or a consular employee who performs administrative or technical work and who does not belong to the service staff shall, except as otherwise provided in....."

According to Article 37, paragraph 3 of the Vienna Convention on Diplomatic Relations, the members of the service staff of diplomatic missions are entitled to the exemption from dues and taxes on the emolument they receive by reason of their employment, but they are not entitled to claim exemption from dues and taxes in general. It would appear, therefore, that the members of the service staff of a consulate are assured of sufficient privileges with respect to taxation in paragraph (1) of this Article.

Agreed Official Minutes re Article 13 (2)(a)

(New Proposal) It is suggested that the following Minute re Article 13 (2) (a) be agreed upon:

"It is understood that the exemption of taxes and similar charges with respect to vehicles referred to in Article 13 (2) (a) shall be granted only to those vehicles which are entitled to receive, or have received, consular number plates."

Article 13 [(3)]

(Embassy's Note) The Ministry is ready to accept the Embassy's suggestion to delete this paragraph.

Article 13 /(3)/ /(4)/ Preamble

(Embassy's Note) As the Embassy pointed out in its Note, the preamble of this paragraph has been erroneously omitted.

(New Proposal) It is proposed, however, that the preamble be amended as follows:

"The receiving state or any local subdivision thereof may impose the following taxes upon a consular officer or employee:"

Article 13 /(3)/ /(4)/ (d)

(New Proposal) Although the Embassy's Note states that the U. S. side agrees to the inclusion of the taxes on electricity and gas in this sub-paragraph, the Ministry wishes to know whether the U. S. side would agree to the additional inclusion of the diesel oil delivery tax. If this proposal is accepted, this sub-paragraph would read as follows:

"(d) taxes on use of amusement facilities, the amusement tax, the spa tax, the traveling tax, the tax on electricity and gas, and the diesel oil delivery tax."

Article 13 /(4)/ /(5)/ (a)

(Embassy's Note) The Ministry is ready to accept the Embassy's suggestion to delete the word "other" which appears at the beginning of this sub-paragraph.

Agreed Official Minutes re Article 13 (3)

(Embassy's Note) The Ministry is ready to accept the Embassy's suggestion to delete this Minute.

Article 14 (2)

(New Proposal) It is proposed that the beginning part of this paragraph be amended to read "A consular officer may import into ....," and that the words "or employee" in the second sentence be deleted. It is further suggested that the words "members of his family residing with him" which appear in the first sentence of this paragraph be replaced by the following expression used in sub-paragraph 1 (b) of Article 36 of the Vienna Convention on Diplomatic Relations:

"Members of his family forming part of his household."

New Paragraph to be added after Article 14 (2)

(New Proposal) It is suggested that the following paragraph be placed after paragraph (2) of Article 14:

"A consular employee who performs administrative or technical work and who does not belong to the service staff shall also enjoy the privileges specified in the preceding paragraph with respect to articles imported at the time of his first installation."

According to Article 37, paragraphs 2 and 3 of the Vienna Convention on Diplomatic Relations, customs privileges of the employees of diplomatic missions are more restricted than what a consular employee would be entitled to in virtue of the original draft of Article 14 (2). The above proposal is intended to equate the customs privileges of the consular employees to those envisaged in the said Article of the Vienna Convention.

Article 14 /(3)7

(Embassy's Note) The Ministry is ready to accept the Embassy's suggestion to delete this Minute.

Article 15 (4)

(New Proposal) It is proposed that this paragraph be amended as follows:

"The administrative authorities of the receiving state at no time shall prevent a national of the sending state from communicating with the appropriate consular officer and, unless subject to lawful detention, visiting him at his consular office."

Article 16 (1)

(New Proposal) It is suggested that the words "without delay" which appear in the third sentence of this paragraph be replaced by the words "without undue delay."

Article 17 (1) (e)

(New Proposal) It is proposed that this sub-paragraph be amended as follows:



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"(e)

(i) serve judicial documents, on behalf of the courts of the sending state, upon, or

(ii) take evidence, on behalf of the courts of the sending state, voluntarily given by, or

(iii) administer oaths to

any person in the receiving state in accordance with the laws of the sending state and in a manner not inconsistent with the laws of the receiving state;"

(New Proposal) It is further proposed that the following Minute be appended to this sub-paragraph:

"It is understood that evidence to be taken by consuls shall include testimony given by expert witnesses, but shall not include any material evidence." /Embassy Note: Japan also intended to include the following sentence in the proposed New Minute but withdrew the proposal during the 5th negotiating session: "..the service of subpoenas or show-cause orders by U. S. consuls in Japan shall not be made upon those persons who possess other nationalities than that of the U. S. A./7

Article 17 (1) /(f)/

(Embassy's Note) The Ministry agrees with the Embassy's suggestion for the insertion of this sub-paragraph.

Article 17 (4) (b)

(New Proposal) It is proposed that this sub-paragraph be deleted as it does not appear that there would be much use for this sub-paragraph.

Article /18/ to /20/, and New Article in lieu of them

(Embassy's Note) The Ministry is ready to accept the Embassy's suggestion to replace Article 18 to 20 by Article 6 of the Short Form.

(New Proposal) It is suggested, however, that paragraph (1) of the new article be replaced by the preamble and sub-paragraph (a) of Article /18/.

Article 21 (1)

(New Proposal) It is proposed that the following words be added

in the first sentence between the words "to communicate with and" and "visit a consular officer":

", subject to immigration laws and regulations of the receiving state,".

Article 21 (2)

(New proposal) It is suggested that the word "invoke" be replaced by the word "request".

Article 22 (3)

(New proposal) As the expression "decide disputes between the master and members of the crew of a vessel including disputes as to pay and contracts of service," used in this paragraph conflicts with the provisions of Article 102 of the Mariners' Law of Japan, it is suggested that this phrase be modified as follows:

"decide or arrange for the settlement of disputes between the master and members of the crew of a vessel including disputes as to pay and contracts of service in accordance with the laws of the sending state,".

Article 23 (1), (2) and (3)

(New proposal) The provisions of these paragraphs are not in conformity with the provisions of Article 19 of the Convention on the Territorial Sea and the Contiguous Zone adopted at Geneva in April, 1958. As the problem of jurisdiction over matters taking place in the territorial waters may be left to the provisions of the said Convention, it is proposed that the word "territorial" appearing twice in the preamble of paragraph (2) be replaced by the word "internal" and that the word "territorial" appearing in sub-paragraph (2) (b) be replaced by the words "ports or in the internal".

It is further proposed that the words "who are not nationals of the receiving state" be added at the end of the same sub-paragraph, after the words "other than member of the crew".

Agreed Official Minutes re Article 23 (2)

(New proposal) It is proposed that the words "regarding public health or customs" and "territorial waters" of this Minute be replaced respectively by the words "regarding public health, customs or immigration" and "ports or internal waters."

Article 24 (1)

(New Proposal) It is proposed that the words "of the master" be inserted between the words "consent" and "of the vessel".

A new Article to be added after Article 25

(New Proposal) It is proposed that a new article, similar to the second sentence of Article 7 (5) of the Short Form, which would make the provisions of this Convention regarding vessels applicable to aircraft, be inserted after Article 25. It would read as follows:

"For the purposes of Articles 21 to 25, the term 'vessel' shall be deemed to include aircraft, and the term 'shipping laws' shall be construed, as applied to aircraft, to refer to aviation laws, and the term 'waters' shall be construed, as applied to aircraft, to refer to territory of the receiving state."

Article 26 (2)

(New Proposal) It is proposed that the words "any Article of this Convention" be replaced by the words "any provision of this Convention".

Agreed Official Minutes re Consular Convention

(New Proposal) As it is desirable that this Minute be included in the text of the Convention itself, it is proposed that this Minute be placed in the Convention as a new paragraph (3) of Article 26. Consequently the present paragraph (3) would become paragraph (4).

Protocol /1/

(Embassy's Note) The Ministry is ready to accept the Embassy's amendment proposal.

(New proposal) It is suggested, as a consequence of the proposed deletion of Article 1, that the words "notwithstanding the provisions of Article 1," be deleted and that the words "the Panama Canal Zone, or" be inserted between the words "shall not apply to" and "any area" in this paragraph.

Protocol /2/

(Embassy's Note) The Ministry does not find it desirable to delete this paragraph.

(New Proposal) Instead, the Ministry wishes to suggest that this paragraph be replaced by the following:

"The term 'nationals' in relation to Japan, referred to in sub-paragraph (3) (b) of Article 2 of the Convention, shall be deemed to include all native inhabitants of the area to which this Convention shall not apply in accordance with paragraph 1 of this Protocol. However, the right of Japanese consuls to represent Ryukyuans in the United States will not extend to those matters for which authorization from the appropriate authorities in the Ryukyu Islands would be required. The appropriate authorities of the two Governments will consult, whenever necessary, concerning the consular services provided for in this Convention to be rendered in the interests of the Ryukyuans in the United States." /Embassy Note: The original Japanese proposal which was changed in favor of the foregoing proposal during the third negotiating session read as follows: "The Ministry does not find it desirable to delete this whole paragraph. Instead, the Ministry wishes to suggest that the following words be deleted from this paragraph: 'and all juridicial entities duly constituted under applicable laws within.' The Ministry is ready to append an Agreed Official Minute to this paragraph stipulating that, for practical purposes, only those Okinawans to whom Japanese passports have been issued would be given protection by Japanese consuls in the United States of America."/

Protocol /4/ /5/ and /5/ /6/

(Embassy's Note) As this Convention is intended to regulate consular relations, it would not be necessary to have any provisions referring to diplomats or diplomatic property. Also, it does not appear to the Ministry that difficulties would entail between the two countries if these paragraphs were omitted.

It is, therefore, proposed that both the original text of this paragraph and the new paragraphs in lieu of them proposed by the Embassy be dispensed with from the Protocol.

Agreed Official Minutes re Protocol (1) and (2)

(Embassy's Note) The Ministry is ready to accept the Embassy's proposal to delete this Minute.

New Article on Limitations

It is proposed that a new article which reads as follows be inserted before Article 26 of the proposed Convention:

"(1) The privileges and immunities conferred by Articles 9 (2), 9 (4), 11 (1) (b), 11 (3), 11 (5), 13 (2), 13 [(4)] [(5)] and 14 (2) shall not be accorded to a consular officer or employee, or member of his family forming part of his household, if such officer or employee is a national of the receiving state, or has the status in the receiving state of an alien lawfully admitted for permanent residence, or is engaged in any private occupation for gain in the receiving state, or is other than a full-time officer or employee of the sending state.

(2) The privileges and immunities conferred by Article 7 (1), 8 (4) and 12 [(2)] shall not be accorded to the sending state with respect to a consular office in the charge of a consular officer or employee referred to in the preceding paragraph, or with respect to a residence for such consular officer or employee."

This new article, similar to Article 15 (Limitations) of the Short Form, is proposed to be included in this Convention in order to limit the privileges and immunities of honorary consuls, consular officers and employees who are nationals of the receiving state, etc. in a single article for the sake of easy reference.

The above new article has been drafted so as not to incur any substantial alterations to the privileges and immunities provided for in the original text of the proposed Convention except with respect to the applicability of the second and third sentences of Article 10 (1) to non-career consular officers. Insertion of the proposed article would subsequently necessitate further amendment of other articles.

Article 2 (7)

It is proposed that the words "career consular officers or career consular employees" of this paragraph be replaced by the words "consular officers or employees."

Article 2 (9)

It is proposed that this paragraph be deleted.

Article 2 (11)

It is suggested that this paragraph be deleted.

Agreed Official Minutes re Article 2 (11)

It is proposed that this Minute be either deleted or appended to Article 2 (10).

Article 7 (1)

It is proposed that the words "a career consular officer or career consular employee" which appear in the first sentence of this paragraph be replaced by the words "a consular officer or employee".

Article 8 (4)

It is proposed that the words "in the charge of a career consular officer" which appear in the first sentence of this paragraph be deleted.

Article 9 (2) and (4)

It is proposed that the words "career consular officer or career consular employee" which appear in the first sentence of paragraphs (2) and (4) of Article 9 be replaced by the words "consular officer or employee".

Article 10 (1)

It is proposed that the words "in the case of a career consular officer" which appear in the second sentence of this paragraph be deleted. It is further proposed that the word "career" which appears in the third sentence of this paragraph be deleted.

Agreed Official Minutes re Article 10 (1)

It is proposed that the word "career" be deleted.

Article 11 (1) (b)

It is proposed that the word "career" be deleted.

Article 11 (3) and (5)

It is proposed that the words "A career consular officer or career consular employee" which appear in the first sentences of paragraphs (3)

and (5) of Article 11 be replaced by the words " consular officer or employee."

Article 11 (5)

It is proposed that the last sentence beginning with "A consular officer shall not while ...." be removed from this paragraph and made a new paragraph (6). Consequently paragraph (6) would become paragraph (7).

Article 12 /(2)/

It is suggested that the words "career consular officers or career consular employees" which appear in the first sentence of this paragraph be replaced by the words "consular officers or employees".

Article 13 /(4)/ /(5)/

It is proposed that the words "a career consular officer or career consular employee" be replaced by the words "a consular officer or employee."

Article 14 (2)

It is proposed that the words "A career consular officer or a career consular employee" which appear in the first sentence be replaced by the words "A consular officer" and that the words "or employee" in the second sentence be deleted.

Protocol /2/ /3/

It is suggested that the words "Articles 5 (3), 9 (2), 11 (1) (b), 11 (3), 11 (5), 13 and 14" of this paragraph be replaced by the words "Article 13 (1)".

COMPARATIVE TABLE OF US/JAPAN DRAFTS BEFORE RESUMPTION OF FORMAL NEGOTIATIONS ON JULY 17, 1961 AND AFTER NEGOTIATIONS RESUMED ON JULY 17, 1961

US/Japan Draft Before Negotiations Resumed on July 17, 1961

[ ] Desired Deletions by USA

_ _ _ Desired Additions by USA

Post July 17, 1961 Draft Reflecting Current Views of the Japanese Government.

[ ] Agreed Deletions

_ _ _ Agreed Additions

_____ Suggested New or Substitute Wording

When a deletion is desired without new wording proposed, the desired deletion will appear //////in the text and a short explanatory note immediately following the paragraph where the deletion is made will be included.

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Article 1

The territories of the High Contracting Parties to which the provisions of this Convention apply shall be understood to comprise all areas of land and water subject to the sovereignty or authority of either High Contracting Party, except the Panama Canal Zone.

Article 2

For the purpose of this Convention:

(1) The term "sending state" means the High Contracting Party by which a consular officer is appointed;

(2) The term "receiving state" means the High Contracting Party within whose territories a consular officer of the sending state exercises his functions;

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Article 1

//////////////////////////

Note: Japan desires deletion of this Article.

Article 2

For the purpose of this Convention:

(1) The term "sending state" means the High Contracting Party by which a consular officer is appointed;

(2) The term "receiving state" means the High Contracting Party within whose territories a consular officer of the sending state exercises his functions;

(3) The term "nationals" means:

(a) in relation to the United States of America, all citizens of the United States and all persons under the protection of the United States, including, where the context permits, all juridical entities duly created in or under the laws of any of the territories of the United States to which the Convention applies;

(b) in relation to Japan, all persons possessing the nationality of Japan, including, where the context permits, all juridical entities duly created in, and under the laws of, Japan;

(4) The term "person" shall be deemed to include any individual or juridical entity;

(5) The term "vessel", unless otherwise specified, means any ship or craft documented under the laws of any of the territories of the sending state to which the Convention applies;

(6) The term "consular office" shall, when used to describe or identify physical property, be deemed to refer to the premises used by the sending state for the conduct of official consular business;

(7) The term "consular establishment" shall be deemed to include all immovable property used or held by the sending state for a consular office, for residences for one or more career consular officers or career consular employees or for related purposes, all movable property required to furnish, equip and operate such immovable property and, in general, all property needed for the effective performance of consular functions, including vehicles, vessels and aircraft;

(3) The term "nationals" means:

(a) in relation to the United States of America, all citizens of the United States and all persons under the protection of the United States, including, where the context permits, all juridical entities duly created in or under the laws of any of the territories of the United States to which the Convention applies;

(b) in relation to Japan, all persons possessing the nationality of Japan, including, where the context permits, all juridical entities duly created in, and under the laws of, Japan;

(4) The term "person" shall be deemed to include any individual or juridical entity;

(5) The term "vessel", unless otherwise specified, means any ship or craft documented under the laws of any of the territories of the sending state to which the Convention applies;

(6) The term "consular office" shall, when used to describe or identify physical property, be deemed to refer to the premises used by the sending state for the conduct of official consular business;

(7) The term "consular establishment" shall be deemed to include all immovable property used or held by the sending state for a consular office, for residences for one or more consular officers or employees or for related purposes, all movable property required to furnish, equip and operate such immovable property and, in general, all property needed for the effective performance of consular functions, including vehicles, vessels and aircraft.



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(8) The term "consular officer" means any individual authorized by the sending state to exercise consular functions who is granted an exequatur or provisional or other authorization by the appropriate authorities of the receiving state;

(9) The term "career consular officer" means a consular officer who is a national of the sending state and is not a national of the receiving state, and who is not engaged in any private occupation for gain in the receiving state;

(10) The term "consular employee" means any individual, other than a consular officer, employed in a consular office of the sending state, whose name has been duly communicated to the appropriate authorities of the receiving state in accordance with the provisions of paragraph (2) of Article 6. /The term, however, does not include any person employed as a consular guard, messenger, or driver of a vehicle, unless he is a national of the sending state; nor does it include any person engaged in domestic duties./

(11) The term "career consular employee" means a consular employee who is an employee of the sending state for an indefinite period of time, who is a national of the sending state and is not a national of the receiving state, and who is not engaged in any private occupation for gain in the receiving state;

(12) The term "archives" shall be deemed to include official correspondence, documents, papers, books, records, cash, stamps, seals, filing cabinets, safes and other similar items held or used for official purposes;

(8) The term "consular officer" means any individual authorized by the sending state to exercise consular functions who is granted an exequatur or provisional or other authorization by the appropriate authorities of the receiving state;

(9) ////////

Note: Japan desires deletion of this paragraph. See proposed New Article on Limitations.

(10) The term "consular employee" means any individual, other than a consular officer, who performs administrative or technical work or belongs to the service staff of a consular office provided that his name has been duly communicated to the appropriate authorities of the receiving state in accordance with the provisions of paragraph (2) of Article 6. /The term, however, does not include any person employed as a consular guard, messenger, or driver of a vehicle, unless he is a national of the sending state; nor does it include any person engaged in domestic duties./

(11) ////////

Note: Japan desires deletion of this paragraph. See proposed New Article on Limitations.

(12) The term "archives" shall be deemed to include official correspondence, documents, papers, books, records, cash, stamps, seals, filing cabinets, safes and other similar items held or used for official purposes;

(13) The term "local subdivision" shall be deemed to refer to any political or administrative subdivision of one of the High Contracting Parties, including, by way of example and not by way of limitation, any state, prefecture, country or municipality;

(14) The term "authorities of the receiving state" shall be deemed to include the authorities of the receiving state and of any local subdivision thereof;

(15) The term "laws" shall be deemed to include the laws, decrees, regulations, ordinances and similar measure having the force of law in the territories of either High Contracting Party or in any local subdivision thereof.

Article 3

(1) The sending state may establish and maintain consular offices in the territories of the receiving state /at any place where any third state maintains a consular office and/ at any place where the receiving state agrees to the establishment /of a consular office/ thereof. The sending state may in its discretion designate a consular office as a consulate general, consulate, vice consulate, or consular agency.

(2) The sending state may, subject /to paragraph (3) of this Article/ to the right of the receiving state to object thereto, prescribe the limits of its consular districts in the receiving state and shall keep the receiving state informed of such limits.

/(3) The receiving state shall have the right to object to the inclusion within a consular district of any area which is not within a consular district of a third state./

(13) The term "local subdivision" shall be deemed to refer to any political or administrative subdivision of one of the High Contracting Parties, including, by way of example and not by way of limitation, any state, prefecture, county or municipality;

(14) The term "authorities of the receiving state" shall be deemed to include the authorities of the receiving state and of any local subdivision thereof;

(15) The term "laws" shall be deemed to include the laws, decrees, regulations, ordinances and similar measures having the force of law in the territories of either High Contracting Party or in any local subdivision thereof.

Article 3

(1) The sending state may establish and maintain consular offices in the territories of the receiving state at any place where any third state maintains a consular office and at any place where the receiving state agrees to the establishment of a consular office. The sending state may in its discretion designate a consular office as a consulate general, consulate, vice consulate, or consular agency.

(2) The sending state may, subject to paragraph (3) of this Article, prescribe the limits of its consular districts in the receiving state and shall keep the receiving state informed of such limits.

(3) The receiving state shall have the right to object to the inclusion within a consular district of any area which is not within a consular district of a third state.

(4) A consular officer may, upon notification to and in the absence of objections from the receiving state, perform consular functions outside his consular district.

Article 4

(1) The sending state may assign or appoint consular officers of such number and rank as it may deem necessary to any of its consular offices in the receiving state. The sending state shall notify the receiving state in writing of the assignment of a consular officer to a consular office in the receiving state.

(2) The receiving state shall, on presentation of the officer's commission or other notification of assignment, grant as soon as possible and free of charge such consular officer an exequatur or other authorization to perform consular functions. The receiving state shall, when necessary, pending the grant of an exequatur or other authorization, grant the consular officer a provisional authorization.

(3) The receiving state may not refuse to grant an exequatur or other authorization without good cause.

(4) The receiving state shall not, except as otherwise specifically provided in this Convention, be deemed to have consented to having a consular officer acting as such or to have extended to him the benefits of this Convention prior to the grant of an exequatur or other authorization, including provisional authorization.

Article 5

(1) The receiving state shall _,_ upon request _,_ inform without delay its

(4) A consular officer may, upon notification to and in the absence of objections from the receiving state, perform consular functions outside his consular district.

Note: Japan prefers the original wording of this Article to the new wording proposed by the U. S.

Article 4

(1) The sending state may assign or appoint consular officers of such number and rank as it may deem necessary to any of its consular offices in the receiving state. The sending state shall notify the receiving state in writing of the assignment of a consular officer to a consular office in the receiving state.

(2) The receiving state shall, on presentation of the officer's commission or other notification of assignment, grant as soon as possible and free of charge such consular officer an exequatur or other authorization to perform consular functions. The receiving state shall, when necessary, pending the grant of an exequatur or other authorization, grant the consular officer a provisional authorization.

(3) The receiving state may not refuse to grant an exequatur or other authorization without good cause.

(4) The receiving state shall not, except as otherwise specifically provided in this Convention, be deemed to have consented to having a consular officer acting as such or to have extended to him the benefits of this Convention prior to the grant of an exequatur or other authorization, including provisional authorization.

Article 5

(1) The receiving state shall _,_ upon request _,_ inform without delay its



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appropriate authorities of the name of any consular officer entitled to act under this Convention.

(2) As an official agent of the sending state, a consular officer shall be entitled to special protection and to the high consideration of all officials of the receiving state with whom he has official intercourse.

(3) The sending state and the consular officers and employees of the sending state shall, subject to reciprocity, enjoy in the receiving state, in addition to the rights conferred by the terms of this Convention, treatment not less favorable than that accorded to any third state for the operation of its consular offices or to the consular officers or employees of such states, both as regards the privileges granted and the consular functions which may be performed.

(4) The receiving state may revoke the exequatur or other authorization of a consular officer whose conduct has given serious cause for complaint. The reason for such revocation shall, upon request, be furnished to the sending state through diplomatic channels.

Article 6

(1) A consular officer or employee may be assigned temporarily in an acting capacity to perform duties of a consular officer who has died or is unable to act through illness, absence or other cause. Pending the return of the former officer, the assignment of a new officer or the confirmation of the acting officer, such acting officer may perform the duties and enjoy the benefits of the provisions of this Convention upon notification to the Government of the receiving state.

appropriate authorities of the name of any consular officer entitled to act under this Convention.

(2) As an official agent of the sending state, a consular officer shall be entitled to special protection and to the high consideration of all officials of the receiving state with whom he has official intercourse.

(3) The sending state and the consular officers and employees of the sending state shall, subject to reciprocity, enjoy in the receiving state, in addition to the rights conferred by the terms of this Convention, treatment not less favorable than that accorded to any third state for the operation of its consular offices or to the consular officers or employees of such states, both as regards the privileges granted and the consular functions which may be performed.

Note: Japan prefers to retain this paragraph.

(4) The receiving state may revoke the exequatur or other authorization of a consular officer whose conduct has given serious cause for complaint. The reason for such revocation shall, upon request, be furnished to the sending state through diplomatic channels.

Article 6

(1) A consular officer or employee may be assigned temporarily in an acting capacity to perform duties of a consular officer who has died or is unable to act through illness, absence or other cause. Pending the return of the former officer, the assignment of a new officer or the confirmation of the acting officer, such acting officer may perform the duties and enjoy the benefits of the provisions of this Convention upon notification to the Government of the receiving state.

(2) The sending state shall be free to employ the necessary number of consular employees at its consular offices, but the appropriate authorities of the receiving state shall be informed of the name and address of each employee. It will be for the Government of the receiving state to designate the particular authority to whom this information is to be given.

(3) The sending state may, with the permission of the receiving state, and subject to the procedures established by Article 4, assign one or more members of its diplomatic mission accredited to the receiving state to the performance of consular functions. Such persons shall be entitled to the benefits, and be subject to the obligations, of this Convention, without prejudice to any additional personal privileges to which they may be entitled by virtue of being members of the diplomatic mission of the sending state.

Article 7

(1) The sending state may acquire under such form of tenure as it may choose, whether on lease, in full ownership, or under such other form of tenure as may exist under the laws of the receiving state, and may thus hold and occupy, either in its own name or in the name of one or more persons acting on behalf of the sending state, land, buildings,

(2) The sending state shall be free to employ the necessary number of consular employees at its consular offices, but the appropriate authorities of the receiving state shall be informed of the name and address of each employee. It will be for the Government of the receiving state to designate the particular authority to whom this information is to be given.

(3) The sending state may, with the permission of the receiving state, and subject to the procedures established by Article 4, assign one or more members of its diplomatic mission accredited to the receiving state to the performance of consular functions. Such persons shall be entitled to the benefits, and be subject to the obligations, of this Convention, without prejudice to any additional personal privileges to which they may be entitled by virtue of being members of the diplomatic mission of the sending state.

(New Paragraph)

(4) The receiving state may refuse to accept a size of the consular staff exceeding what is reasonable and normal having regard to circumstances and conditions in the consular district, and to the needs of the particular consulate.

Note: See alternative proposal in the form of an Agreed Official Minute Re Article 6.

Article 7

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parts of buildings, and appurtenances located in the receiving state and required by the sending state for the purposes of a consular office, or of a residence for a career consular officer or career consular employee, or for other purposes to which the receiving state does not object, arising out of the operation of a consular establishment of the sending state. If, under the laws of the receiving state, the permission of the authorities of the receiving state must be obtained as a prerequisite to any such acquisition, such permission shall be granted on request.

(2) The sending state shall have the right to erect, as part of its consular establishments, buildings and appurtenances on land which it so owns or holds on lease.

(3) It is understood that the sending state shall not be exempt from compliance with any local building, zoning or town planning regulations applicable to all land in the area in which such land is situated.

(4) The phrase "one or more persons acting on behalf of the sending state" shall, within the meaning of this Convention, be deemed to refer to any person or persons holding property in a trust or similar capacity for the benefit of the sending state.

Article 8

(1) The consular officer in charge may place, outside the consular office, the coat-of-arms or national device of the sending state and an appropriate inscription in the official language of the sending state designating such office.

(2) The consular officer in charge may fly the flag of the sending state and the consular flag at the consular office. Any consular officer may also place the

parts of buildings, and appurtenances located in the receiving state and required by the sending state for the purposes of a consular office, or of a residence for a consular officer or employee, or for other purposes to which the receiving state does not object, arising out of the operation of a consular establishment of the sending state. If, under the laws of the receiving state, the permission of the authorities of the receiving state must be obtained as a prerequisite to any such acquisition, such permission shall be granted on request.

Note: See proposed New Article on Limitations.

(2) The sending state shall have the right to erect, as part of its consular establishments, buildings and appurtenances on land which it so owns or holds on lease.

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coat-of-arms or device and fly the flag of the sending state and its consular flag on the vehicles, vessels and aircraft which he employs in the exercise of his duties. Such flags may also be flown on suitable occasions at the residence of the consular officer in charge and in times of emergency at the residence of any consular officer.

(3) (a) The archives, kept in a consular office of the sending state, shall at all time be inviolable, and the authorities of the receiving state may not, under any pretext, examine or detain them.

(b) The archives of the consular office shall be kept in a place entirely separate from the place where the private or business papers of such officer are kept. This provision does not require the separation of diplomatic from consular archives when a consular office forms part of the diplomatic mission.

(4) A consular office in the charge of a career consular officer shall not be entered by the police or other authorities of the receiving state, except with the consent of the responsible consular officer or, if such consent cannot be obtained, pursuant to appropriate writ or process and with the consent of the Secretary of State of the United States of America when the United States of America is the receiving state or the Minister for Foreign Affairs when Japan is the receiving state. The consent of the responsible consular officer shall be presumed in the event of fire or other disaster or in the event that the authorities of the receiving state have probable cause to believe that a crime of violence has been, or is being, or is about to be committed in the consular office.

coat-of-arms or device and fly the flag of the sending state and its consular flag on the vehicles, vessels and aircraft which he employs in the exercise of his duties. Such flags may also be flown on suitable occasions at the residence of the consular officer in charge and in times of emergency at the residence of any consular officer.

(3) (a) The archives of the consular office shall at all time be inviolable, and the authorities of the receiving state may not, under any pretext, examine or detain them.

(b) The archives of the consular office shall be kept in a place entirely separate from the place where the private or business papers of such officer are kept. This provision does not require the separation of diplomatic from consular archives when a consular office forms part of the diplomatic mission.

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Note: Japan desires deletion of the words "in the charge of a career

(5) A consular office shall not be used to afford asylum to fugitives from justice. If a consular officer shall refuse to surrender a fugitive from justice on the lawful demand of the authorities of the receiving state, such authorities may, in accordance with the procedures established by paragraph (4) of this Article, enter the consular office to apprehend the fugitive.

(6) Any entry into or search of a consular office pursuant to paragraphs (4) and (5) of this Article, shall be conducted with due regard to the inviolability of the consular archives.

Article 9

(1) The sending state shall enjoy an exemption from all military requisition, contributions or billeting with respect to property forming part of its consular establishments in the receiving state, including all vehicles, vessels and aircraft. Immovable property may, however, be seized or taken for purposes of national defense or public utility in accordance with the laws of the receiving state.

(2) A career consular officer or career consular employee shall enjoy an exemption from all military requisition, contributions or billeting with respect to the private residence and the furniture and other household articles and all vehicles, vessels and aircraft held or possessed by him. Such private residence may, however, be seized or taken for purposes of national defense or public utility in accordance with the laws of the receiving state.

consular officer" which appear at the beginning of this paragraph immediately after the words "a consular office". See proposed New Article on Limitations.

(5) A consular office shall not be used to afford asylum to fugitives from justice. If a consular officer shall refuse to surrender a fugitive from justice on the lawful demand of the auth ities of the receiving state, such authorities may, in accordance with the procedures established by paragraph (4) of this Article, enter the consular office to apprehend the fugitive.

(6) Any entry into or search of a consular office pursuant to paragraphs (4) and (5) of this Article, shall be conducted with due regard to the inviolability of the consular archives.

Article 9

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(2) A consular officer or employee shall enjoy an exemption from all military requisition, contributions or billeting with respect to the private residence and the furniture and other household articles and all vehicles, vessels and aircraft held or possessed by him. Such private residence may, however, be seized or taken for purposes of national defense or public utility in accordance with the laws of the receiving state.

Note: See proposed New Article on Limitations.



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(3) In any of the cases referred to in (1) and (2) every effort shall be made to avoid interference with the performance of consular functions.

(4) The sending state or the career consular officer or career consular employee shall receive due compensation for all such property seized or taken. Compensation shall be payable at the official selling rate of exchange most favorable to the sending state at the time when the property was seized or taken, in a form readily convertible into the currency of and transferable to the sending state, not later than three months from the date on which the amount of compensation has been finally fixed.

Article 10

(1) A consular officer may be in communication with his government or with the diplomatic mission and consular offices of the sending state, in the receiving state or with other diplomatic missions and consular offices of the sending state, making use of all public means of communication. In the case of a career consular officer this includes the right to make use of secret language. In addition, a career consular officer may send and receive official documents, either in clear or secret language, by courier or by means of sealed official pouches and other official containers.

(2) The official documents referred to in this Article shall be inviolable and the authorities of the receiving state shall not examine or detain them. Sealed official pouches and other official containers shall be inviolable when they are certified by a responsible officer of the sending

(3) In any of the cases referred to in (1) and (2) every effort shall be made to avoid interference with the performance of consular functions.

(4) The sending state or the consular officer or employee shall receive due compensation for all such property seized or taken. ////////////////////

Note: Japan desires deletion of the second sentence of this paragraph. As to the words "the consular officer or employee" see proposed New Article on Limitations.

Article 10

(1) A consular officer may be in communication with his government or with the diplomatic mission and consular offices of the sending state, in the receiving state or with other diplomatic missions and consular offices of the sending state, making use of all public means of communication.//////////////// This includes the right to make use of secret language. In addition, a consular officer may send and receive official documents, either in clear or secret language, by courier or by means of sealed official pouches and other official containers.

Note: Japan desires deletion of the words "In the case of career consular officer" in the second sentence. See New Article on Limitations.

(2) The official documents referred to in this Article shall be inviolable and the authorities of the receiving state shall not examine or detain them. Sealed official pouches and other official containers shall be inviolable when they are certified by a responsible officer of the sending



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state as containing only official documents.

(3) During such time as the receiving state is /at war,/ engaged in armed conflict, the right of communication, other than that relating to communications between the consular officer and his government and between the consular officer and the diplomatic mission of the sending state in the receiving state, may be subject to reasonable restriction by the receiving state.

Article 11

(1) (a) A consular officer or employee shall not, except with the consent of the sending state, be subject to the jurisdiction of the courts of the receiving state in respect of acts performed in his official capacity, falling within the functions of a consular officer under this Convention.

(b) A career consular officer shall be exempt from arrest or prosecution in the receiving state except when charged with the commission of a crime which, upon conviction, might subject the individual guilty thereof to a sentence of imprisonment for a period of one year or more.

(2) It is understood that the provisions of subparagraph (1) (a) of this Article do not preclude a consular officer or employee from being held liable in a civil action arising out of a contract concluded by him in his private capacity and not within the scope of his official duties, and that the provisions of subparagraph (4) (b) of this Article do not entitle a consular officer or employee to refuse to produce any document or to give evidence relating to such a contract.

state as containing only official documents.

(3) During such time as the receiving state is/as war,/ engaged in armed conflict, the right of communication, other than that relating to communications between the consular officer and his government and between the consular officer and the diplomatic mission of the sending state in the receiving state, may be subject to reasonable restriction by the receiving state.

Article 11

(1) (a) A consular officer, or a consular employee who is not a national of the receiving state, shall not, except with the consent of the sending state, be subject to the jurisdiction of the courts of the receiving state in respect of acts performed in the official capacity and falling within the functions of a consular officer under this Convention.

(b) A consular officer shall be exempt from arrest or prosecution in the receiving state except when charged with the commission of a crime which, upon conviction, might subject the individual guilty thereof to a sentence of imprisonment for a period of one year or more.

Note: As to the words "A consular officer", see proposed New Article on Limitations.

(2) It is understood that the provisions of subparagraph (1) (a) of this Article do not preclude a consular officer or employee from being held liable in a civil action arising out of a contract concluded by him in his private capacity and not within the scope of his official duties, and that the provisions of subparagraph (4) (b) of this Article do not entitle a consular officer or employee to refuse to produce any document or to give evidence relating to such a contract.

(3) A career consular officer or career consular employee shall enjoy exemption from military, naval, air, police, administrative or jury service of every kind, and from any contribution in lieu thereof.

(4) (a) A consular officer or employee may be required to give testimony in either a civil or a criminal case, except as provided in subparagraph (b) of this paragraph. The administrative or judicial authorities requiring his testimony shall take all reasonable steps to avoid interference with the performance of his official duties and, where possible or permissible, arrange for the taking of such testimony, orally or in writing, at his residence or office.

(b) A consular officer or employee shall be entitled to refuse a request from the administrative or judicial authorities of the receiving state to produce any documents from the consular archives or to give evidence relating to matters falling within the scope of his official duties. Such a request shall, however, be complied with in the interests of justice if it is possible to do so without prejudicing the interests of the sending state. A consular officer or employee is also entitled to decline to give

(New Paragraph)

When the receiving state is permitted to exercise its jurisdiction over a consular officer or employee in virtue of the provisions of preceding paragraphs, it must exercise its jurisdiction in such a manner as not to interfere unduly with the performance of the functions of a consular office.

(3) A consular officer or employee shall enjoy exemption from military, naval, air, police, administrative or jury service of every kind, and from any contribution in lieu thereof.

Note: See proposed New Article on Limitations.

(4) (a) A consular officer or employee may be required to give testimony in either a civil or a criminal case, except as provided in subparagraph (b) of this paragraph. The administrative or judicial authorities requiring his testimony shall take all reasonable steps to avoid interference with the performance of his official duties and, where possible or permissible, arrange for the taking of such testimony, orally or in writing, at his residence or office.

(b) A consular officer or employee shall be entitled to refuse a request from the administrative or judicial authorities of the receiving state to produce any documents from the consular archives or to give evidence relating to matters falling within the scope of his official duties. Such a request shall, however, be complied with in the interests of justice if it is possible to do so without prejudicing the interests of the sending state. A consular officer or employee is also entitled to decline to give

evidence as an expert witness with regard to the laws of the sending state.

(5) A career consular officer or career consular employee and his spouse and minor children residing with him shall be exempt in the receiving state from any requirements with regard to the registration of foreigners and the obtaining of permission to reside. The spouse of such a consular officer or employee shall not receive the benefits of this paragraph if such spouse is gainfully employed in the receiving state. A consular officer shall not while holding his exequatur or other authorization, including provisional authorization, be subject to deportation.

(6) All vehicles, vessels and aircraft owned by the sending state and used for consular purposes, and all vehicles, vessels and aircraft owned by a consular officer or employee of the sending state shall be adequately insured against third party risks, with an insurance company authorized to do, and actually carrying on, business in the receiving state. Any claim arising under any such policy shall be deemed to be a claim arising out of a contract involving liability in a civil action, as contemplated in paragraph (2) of this Article.

Article 12

(1) The sending state, or one or more persons acting on behalf of the sending

evidence as an expert witness with regard to the laws of the sending state.

(5) A consular officer or employee and his spouse and minor children residing with him shall be exempt in the receiving state from any requirements with regard to the registration of foreigners and the obtaining of permission to reside. The spouse of such a consular officer or employee shall not receive the benefits of this paragraph if such spouse is gainfully employed in the receiving state.

Note: See proposed New Article on Limitations.

(New Paragraph)

A consular officer shall not while holding his exequatur or other authorization, including provisional authorization be subject to deportation.

Note: Japan proposes that the last sentence of paragraph (5) be made an independent paragraph.

(6) All vehicles, vessels and aircraft owned by the sending state and used for consular purposes, and all vehicles, vessels and aircraft owned by a consular officer or employee of the sending state shall be adequately insured against third party risks, with an insurance company authorized to do, and actually carrying on, business in the receiving state. Any claim arising under any such policy shall be deemed to be a claim arising out of a contract involving liability in a civil action, as contemplated in paragraph (2) of this Article.

Article 12

(1) The sending state, or one or more persons acting on behalf of the sending



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state, shall, with respect to its consular establishments in the receiving state, be exempt from the payment of all taxes and similar charges of any kind imposed by the receiving state or by any local subdivision thereof for the payment of which the sending state or one or more persons acting on behalf of the sending state would otherwise be legally liable, with respect to:

(a) the acquisition, ownership, use or possession of immovable property, owned or otherwise held or occupied by the sending state and used exclusively for any of the purposes specified in paragraph (1) of Article 7, except taxes or other assessments imposed for services or local public improvements by which and to the extent that such property is benefited;

(b) the acquisition, ownership, possession or use of movable property, including vehicles, vessels and aircraft, owned or used by the sending state exclusively for any of the purposes specified in paragraph (1) of Article 7;

(c) the fees received in compensation for consular services and the receipts given for the payment of such fees;

(d) any other acts or transactions, including the acquisition or rendition of services, incident to the operation of a consular establishment of the sending state.

(2) No provision of Article 12 (1) (d) shall be construed to accord the sending state, or one or more persons acting on behalf of the sending state, exemptions from the taxes on electricity and gas to be imposed on the use of electricity or gas at consular establishments used or held for residences for one or more career consular officers or career

state, shall, with respect to its consular establishments in the receiving state, be exempt from the payment of all taxes and similar charges of any kind imposed by the reciving state or by any local subdivision thereof for the payment of which the sending state or one or more persons acting on behalf of the sending state would otherwise be legally liable, with respect to:

(a) the acquisition, ownership, use or possession of immovable property, owned or otherwise held or occupied by the sending state and used exclusively for any of the purposes specified in paragraph (1) of Article 7, except taxes or other assessments imposed for services or local public improvements by which and to the extent that such property is benefited;

(b) the acquisition, ownership, possession or use of movable property, including vehicles, vessels and aircraft, owned or used by the sending state exclusively for any of the purposes specified in paragraph (1) of Article 7;

(c) the fees received in compensation for consular services and the receipts given for the payment of such fees;

(d) any other acts or transactions, including the acquisition or rendition of services, incident to the operation of a consular establishment of the sending state.

(2) No provision of this Article shall be construed to accord the sending state, or one or more persons acting on behalf of the sending state, exemptions from the taxes on electricity and gas to be imposed on the use of electricity or gas at consular establishments used or held for residences for one or more consular officers or employees or

consular employees or for related purposes, unless:

(a) (i) such consular establishment is owned by the sending state or

(ii) such consular establishment is used or held by the sending state on a lease, during a period of time not shorter than a year and irrespective of changes in residents, and

(b) the sending state is the party to the contract on the use of electricity or gas and is liable for the payment of charges for electricity or gas.

(3) The foregoing exemptions shall not apply with respect to taxes or other similar charges of any kind for which some other person is legally liable, notwithstanding that the burden of the tax or other similar charge may be passed on to the sending state or one or more persons acting on behalf of the sending state.

Article 13

(1) Any consular officer or employee who is a national of the sending state, whether or not he is a national of any other state, shall be exempt from the payment of all taxes or similar charges of any kind imposed by the receiving state or any local subdivision thereof on the official emoluments, salaries, wages or allowances received by such officer or employee from the sending state.

(2) (a) A career consular officer or career consular employee shall, except as otherwise provided in paragraph (4)

for related purposes, unless:

(a) (i) such consular establishment is owned by the sending state or

(ii) such consular establishment is used or held by the sending state on a lease, during a period of time not shorter than a year and irrespective of changes in residents, and

(b) the sending state is the party to the contract on the use of electricity or gas and is liable for the payment of charges for electricity or gas.

Note: As to the words "consular officers or employees" see proposed New Article on Limitations.

(3) the foregoing exemptions shall not apply with respect to taxes or other similar charges of any kind for which some other person is legally liable, notwithstanding that the burden of the tax or other similar charge may be passed on to the sending state or one or more persons acting on behalf of the sending state.

Article 13

(1) Any consular officer or employee who is a national of the sending state, whether or not he is a national of any other state, shall be exempt from the payment of all taxes or similar charges of any kind imposed by the receiving state or any local subdivision thereof on the official emoluments, salaries, wages or allowances received by such officer or employee from the sending state.

(2) (a) A consular officer, or a consular employee who performs administrative or technical work and who does not belong



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of this Article, be exempt from the payment of all taxes or similar charges of any kind, including taxes and similar charges incident to the licensing, titling, registration, use and operation of vehicles owned by such officer or employee, imposed by the receiving state or any local subdivision thereof for the payment of which the officer or employee would otherwise be legally liable. The exemption of taxes or similar charges on imports shall be as provided in Article 14.

(b) The foregoing exemption shall not apply with respect to taxes or other similar charges of any kind for which some other person is legally liable, notwithstanding that the burden of the tax or other similar charge may be passed on to such officer or employee.

/(3) Nothing contained in paragraphs (1) and (2) (a) shall be construed to accord a consular officer or employee any privileges or benefits stated in the said paragraphs unless he would, if he were in the diplomatic mission of the sending state, be entitled to such privileges or benefits./

(4) The provisions of subparagraph (2) (a) shall not apply to:

(a) taxes imposed on the acquisition, ownership or occupation of immovable property situated in the receiving state;

(b) taxes imposed on income derived from sources within the receiving state, other than those stipulated in paragraph (1);

(c) taxes on instruments effecting transactions, such as stamp duties imposed or collected in connection with the transfer of property, or taxes on the transfer of securities;

to the service staff shall, except as otherwise provided in paragraph (4) of this Article, be exempt from the payment of all taxes or similar charges of any kind, including taxes and similar charges incident to the licensing, titling, registration, use and operation of vehicles owned by such officer or employee, imposed by the receiving state or any local subdivision thereof for the payment of which the officer or employee would otherwise be legally liable. The exemption of taxes or similar charges on imports shall be as provided in Article 14.

(b) The foregoing exemption shall not apply with respect to taxes or other similar charges of any kind for which some other person is legally liable, notwithstanding that the burden of the tax or other similar charge may be passed on to such officer or employee.

/(3) Nothing contained in paragraphs (1) and (2) (a) shall be construed to accord a consular officer or employee any privileges or benefits stated in the said paragraphs unless he would, if he were in the diplomatic mission of the sending state, be entitled to such privileges or benefits./

(3) The receiving state or any local subdivision thereof may impose the following taxes upon a consular officer or employee:

(a) taxes imposed on the acquisition, ownership or occupation of immovable property situated in the receiving state;

(b) taxes imposed on income derived from sources within the receiving state, other than those stipulated in paragraph (1);

(c) taxes on instruments effecting transactions, such as stamp duties imposed or collected in connection with the transfer of property, or taxes on the transfer of securities;

(d) taxes on use of amusement facilities, the amusement tax, the spa tax, the traveling tax, and taxes on electricity and gas;

(e) taxes imposed by reason of or incident to the transfer by gift of property situated within the receiving state;

(f) taxes imposed by reason of or incident to the passing on death of property located in the receiving state, such as estate, inheritance, and succession taxes.

(5) (a) Notwithstanding any /other/ provisions of the preceding paragraphs of this Article, no such tax as estate, inheritance or succession tax shall be imposed or collected by the receiving state or any local subdivision thereof by reason of or incident to the passing of movable property located in the receiving state upon the death of a career consular officer or career consular employee in respect of that part of such movable property which the deceased consular officer or employee owned within the receiving state solely in connection with the performance of his official duties, and which does not exceed in value two times the amount of all official emoluments, salaries and allowances received by the consular officer or employee for the year immediately preceding his death.

(b) For the purpose of paragraph (5) (a) and subject to the limitations thereof, household and personal effects, personally owned vehicles and demand deposit accounts or time deposit accounts with a term shorter than one year of the deceased consular officer or employee shall be deemed conclusively to constitute property owned by him solely in connection with the performance of his official duties.

(d) taxes on use of amusement facilities, the amusement tax, the spa tax, the traveling tax, taxes on electricity and gas, and the diesel oil delivery tax.

(e) taxes imposed by reason of or incident to the transfer by gift of property situated within the receiving state;

(f) taxes imposed by reason of or incident to the passing on death of property located in the receiving state, such as estate, inheritance, and succession taxes.

(4) (a) Notwithstanding any /other/ provisions of the preceding paragraphs of this Article, no such tax as estate, inheritance or succession tax shall be imposed or collected by the receiving state or any local subdivision thereof by reason of or incident to the passing of movable property located in the receiving state upon the death of a consular officer or employee in respect of that part of such movable property which the deceased consular officer or employee owned within the receiving state solely in connection with the performance of his official duties, and which does not exceed in value two times the amount of all official emoluments, salaries and allowances received by the consular officer or employee for the year immediately preceding his death.

(b) For the purpose of paragraph (4) (a) and subject to the limitations thereof, household and personal effects, personally owned vehicles and demand deposit accounts or time deposit accounts with a term shorter than one year of the deceased consular officer or employee shall be deemed conclusively to constitute property owned by him solely in connection with the performance of his official duties.

Article 14

(1) The sending state may import into the receiving state, free of all custom duties and internal revenue or other taxes imposed upon or by reason of importation by the receiving state or by any local subdivision thereof, all articles, including vehicles, vessels and aircraft, intended for official use in the receiving state in connection with any of the purposes specified in paragraph (1) of Article 7.

(2) A career consular officer or a career consular employee may import into the receiving state, free of all custom duties and internal revenue or other taxes imposed upon or by reason of importation by the receiving state or by any local subdivision thereof, a reasonable quantity of baggage, effects and other articles, including vehicles, vessels and aircraft, required for the exclusive personal use of himself or members of his family residing with him. Such exemption from duties and taxes shall be granted, during the entire period such officer or employee serves in the receiving state, with respect to

(a) articles accompanying him to his consular post on first arrival or on any subsequent arrival; and with respect to

(b) articles consigned to him or withdrawn by him from customs custody for the above-mentioned purposes.

Note: As to the words "a consular officer or employee" see proposed New Article on Limitations.

Article 14

(1) The sending state may import into the receiving state, free of all custom duties and internal revenue or other taxes imposed upon or by reason of importation by the receiving state or by any local subdivision thereof, all articles, including vehicles, vessels and aircraft, intended for official use in the receiving state in connection with any of the purposes specified in paragraph (1) of Article 7.

(2) A consular officer may import into the receiving state, free of all custom duties and internal revenue or other taxes imposed upon or by reason of importation by the receiving state or by any local subdivision thereof, a reasonable quantity of baggage, effects and other articles, including vehicles, vessels and aircraft, required for the exclusive personal use of himself or members of his family forming part of his household. Such exemption from duties and taxes shall be granted, during the entire period such officer////////// serves in the receiving state, with respect to

(a) articles accompanying him to his consular post on first arrival or on any subsequent arrival; and with respect to

(b) articles consigned to him or withdrawn by him from customs custody for the above-mentioned purposes.

Note: Japan desires deletion of the words "or employee" from the second sentence of this paragraph in view of the following proposed New Paragraph.

As to the words "a consular officer" see proposed New Article on Limitations.



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/(3) Nothing contained in the preceding paragraph (2) shall be construed to accord a career consular officer or employee any privileges or benefits stated in the said paragraph unless he would, if he were in the diplomatic mission of the sending state, be entitled to such privileges or benefits./

(4) It is, however, understood that

(a) the receiving state may, as a condition to the granting of the exemption provided in this Article, require that a notification of any importation be given in such manner as it may prescribe;

(b) the exemption provided in this Article, being in respect of articles imported for official or personal use only, does not extend to, inter alia, articles imported as an accomodation to others or for sale or for other commercial purposes. However, articles imported as samples of commercial products solely for display within a consular office shall not be regarded as excluded from the exemption provided in this Article;

(c) the receiving state may determine that the exemption provided in this Article does not apply in respect of articles grown, produced or manufactured in the receiving state

(New Paragraph)

A consular employee who performs administrative or technical work and who does not belong to the service staff shall also enjoy the privileges specified in the preceding paragraph with respect to articles imported at the time of his first installation.

Note: As to the deletion of the word "career" before "consular employee" see proposed New Article on Limitations.

/(3) Nothing contained in the preceding paragraph (2) shall be construed to accord a career consular officer or employee any privileges or benefits stated in the said paragraph unless he would, if he were in the diplomatic mission of the sending state, be entitled to such privileges or benefits./

(3) It is, however, understood that

(a) the receiving state may, as a condition to the granting of the exemption provided in this Article, require that a notification of any importation be given in such manner as it may prescribe;

(b) the exemption provided in this Article, being in respect of articles imported for official or personal use only, does not extend to, inter alia, articles imported as an accomodation to others or for sale or for other commercial purposes. However, articles imported as samples of commercial products solely for display within a consular office shall not be regarded as excluded from the exemption provided in this Article;

(c) the receiving state may determine that the exemption provided in this Article does not apply in respect of articles grown, produced or manufactured in the receiving state



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which have been exported therefrom without payment of or upon repayment of taxes or duties which would have been chargeable but for such exportation;

(d) nothing herein shall be construed to excuse compliance with customs formalities, or to permit the entry into the receiving state of any article the importation of which is specifically prohibited by law;

(e) the laws and regulations of the receiving state shall apply to the disposition of the articles imported under paragraphs (1) and (2).

Article 15

(1) A consular officer shall be entitled within his district to

(a) interview, communicate with, assist and advise any national of the sending state;

(b) inquire into any incidents which have occurred affecting the interests of any such national;

(c) assist any such national in proceedings before or in relations with the authorities of the receiving state and, where necessary, arrange for legal assistance for him.

(2) For the purpose of protecting nationals of the sending state and their property and interests, a consular officer shall be entitled to apply to and correspondwithin his district with the appropriate authorities, including the appropriate departments of the central government of the receiving state. He shall not, however, be entitled to correspond with or to make diplomatic representations to the Department of State or the Ministry of Foreign Affairs, as the case may be, except in the absence of any diplomatic representative of the sending state.

which have been exported therefrom without payment of or upon repayment of taxes or duties which would have been chargeable but for such exportation;

(d) nothing herein shall be construed to excuse compliance with customs formalities, or to permit the entry into the receiving state of any article the importation of which is specifically prohibited by law;

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(3) A consular officer may also communicate with the authorities of the receiving state within his consular district on any other matters falling within his competence.

(4) A national of the sending state shall have the right at all times to communicate with the appropriate consular officer and, unless subject to lawful detention, to visit him at his consular office.

Article 16

(1) The appropriate authorities of the receiving state shall, at the request of any national of the sending state who is confined in prison awaiting trial or is otherwise detained in custody within his district, immediately inform a consular officer of the sending state. A consular officer shall be permitted to visit without delay, to converse privately with, and to arrange legal representation for any national of the sending state who is so confined or detained. Any communication from such a national to the consular officer shall be forwarded without delay by the authorities of the receiving state.

(2) Where a national of the sending state has been convicted and is serving a sentence of imprisonment, a consular officer in whose district the sentence is being served shall, upon notification to the appropriate authorities, have the right to visit him in prison. Any such visit shall be conducted in accordance with prison regulations, which shall permit reasonable access to and opportunity of conversing with such national. The consular officer shall also be allowed, subject to the prison regulations, to transmit communications between the prisoner and other persons.

(3) A consular officer may also communicate with the authorities of the receiving state within his consular district on any other matters falling within his competence.

(4) The administrative authorities of the receiving state at no time shall prevent a national of the sending state from communicating with the appropriate consular officer and, unless subject to lawful detention, visiting him at his consular office.

Article 16

(1) The appropriate authorities of the receiving state shall, at the request of any national of the sending state who is confined in prison awaiting trial or is otherwise detained in custody within his district, immediately inform a consular officer of the sending state. A consular officer shall be permitted to visit without undue delay, to converse privately with, and to arrange legal representation for any national of the sending state who is so confined or detained. Any communication from such a national to the consular officer shall be forwarded without delay by the authorities of the receiving state.

(2) Where a national of the sending state has been convicted and is serving a sentence of imprisonment, a consular officer in whose district the sentence is being served shall, upon notification to the appropriate authorities, have the right to visit him in prison. Any such visit shall be conducted in accordance with prison regulations, which shall permit reasonable access to and opportunity of conversing with such national. The consular officer shall also be allowed, subject to the prison regulations, to transmit communications between the prisoner and other persons.

Article 17

(1) A consular officer may within his consular district:

(a) receive such declarations as may be required to be made under the nationality laws of the sending state;

(b) issue such notices to, receive such declarations from and provide for such medical examinations of a national of the sending state as may be required under the laws of the sending state with regard to compulsory national service;

(c) register a national of the sending state, register or receive notifications of the birth or death of a national of the sending state, record a marriage celebrated within the receiving state when at least one of the parties is a national of the sending state, and receive any such declarations pertaining to family relationships of a national of the sending state as may be required under the laws of that state;

(d) issue, amend, renew, validate and revoke, in conformity with the laws of the sending state, visas, passports and other similar documents;

(e) take evidence of, on behalf of courts of the sending state, voluntarily given by any person in the receiving state, and administer oaths to such persons, in accordance with the laws of the sending state.

Article 17

(1) A consular officer may within his consular district:

(a) receive such declarations as may be required to be made under the nationality laws of the sending state;

(b) issue such notices to, receive such declarations from and provide for such medical examinations of a national of the sending state as may be required under the laws of the sending state with regard to compulsory national service;

(c) register a national of the sending state, register or receive notifications of the birth or death of a national of the sending state, record a marriage celebrated within the receiving state when at least one of the parties is a national of the sending state, and receive any such declarations pertaining to family relationships of a national of the sending state as may be required under the laws of that state;

(d) issue, amend, renew, validate and revoke, in conformity with the laws of the sending state, visas, passports and other similar documents;

(e) (i) serve judicial documents, on behalf of the courts of the sending state, upon, or

(ii) take evidence, on behalf of the courts of the sending state, voluntarily given by, or

(iii) administer oaths to any person in the receiving state in accordance with the laws of the sending state and in a manner not inconsistent with the laws of the receiving state.

(f) to obtain copies of or extracts from documents of public registry.

(2) It is understood that the registration or the receipt of notifications of a birth or death by a consular officer, the recording by a consular officer of a marriage celebrated under the law of the receiving state, and the receipt by a consular officer of declarations pertaining to the family relationships in no way exempts a person from any obligation laid down by the law of the receiving state with regard to the notification to or registration with the appropriate authorities of the receiving state, of births, deaths, marriages, or other matters pertaining to family relationships of a person.

(3) A consular officer may also within his consular district:

(a) authenticate or certify signatures;

(b) translate into the language of one of the High Contracting Parties acts and documents of any character drawn up in the language of the other High Contracting Party and certify to the accuracy of the translation thereof;

(c) prepare, attest, receive the acknowledgements of, certify, authenticate, legalize and in general take such action as may be necessary to perfect or to validate, any act, document or instrument of a legal character as well as copies thereof, including declarations, testamentary dispositions and contracts.

(4) (a) A consular officer may perform the services specified in paragraph (3) of this Article whenever such services are required by a national of the sending state for use outside the territories of the receiving state or by any person for use in the territories of the sending state or are rendered in accordance with

(f) to obtain copies of or extracts from documents of public registry.

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(a) authenticate or certify signatures;

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(c) prepare, attest, receive the acknowledgements of, certify, authenticate, legalize and in general take such action as may be necessary to perfect or to validate, any act, document or instrument of a legal character as well as copies thereof, including declarations, testamentary dispositions and contracts.

(4) (a) A consular officer may perform the services specified in paragraph(3) of this Article whenever such services are required by a national of the sending state for use outside the territories of the receiving state or by any person for use in the territories of the sending state or are rendered in accordance with

procedures, not prohibited by the laws of the receiving state, established by the sending state for the protection of its nationals abroad or for the proper administration of its laws.

(b) A consular officer may also, to the extent permitted by the receiving state and in conformity with authority conferred on him by the sending state, perform the services specified in paragraph (3) of this Article in circumstances other than those provided for by subparagraph (a) of this paragraph whenever the rendition of such services shall be deemed to be necessary or expedient.

(5) A consular officer may further the cultural, artistic, scientific, commercial, professional and educational interests of the sending state.

Article 18

(1) The appropriate local authorities of the receiving state shall, but only to the extent practicable under existing local procedures and within the limits of the information normally available to them, make every effort to inform a consular officer of the sending state:

(a) of the death, within the area subject to their jurisdiction, of any person known by them to be a national of the sending state; and

(b) of the existence, within the area subject to their jurisdiction, of a decedent's estate or, in general, of any property which had formerly belonged to a deceased person, in which a national of the sending state is known or believed to be entitled to claim an interest.

(2) (a) In any case where a deceased person, irrespective of his nationality or the place of his death, leaves property in the receiving state and

procedures, not prohibited by the laws of the receiving state, established by the sending state for the protection of its nationals abroad or for the proper administration of its laws.

(b)//////////////////////

Note: Japan desires deletion of subparagraph (b).

(5) A consular officer may further the cultural, artistic, scientific, commercial, professional and educational interests of the sending state.

Article 18

(1) The appropriate local authorities of the receiving state shall, but only to the extent practicable under existing local procedures and within the limits of the information normally available to them, make every effort to inform a consular officer of the sending state:

(a) of the death, within the area subject to their jurisdiction, of any person known by them to be a national of the sending state; and

(b) of the existence, within the area subject to their jurisdiction, of a decedent's estate or, in general, of any property which had formerly belonged to a deceased person, in which a national of the sending state is known or believed to be entitled to claim an interest.

(2) (a) In any case where a deceased person, irrespective of his nationality or the place of his death, leaves property in the receiving state and



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an interest of any kind in such property is held or claimed by a national of the sending state who is not resident in the receiving state and is not legally represented there by any person, a consular officer in whose district the estate of the decedent is being administered or, if no administration has been instituted, the property is situated, shall have the right, except as such right may be limited by paragraph (2) of Article 19, to represent such non-resident national as regards his interests in the property. If, however, such non-resident national should designate a third person to represent his interests in the receiving state or establish a residence in the receiving state, the right of the consular officer to represent such national shall terminate as of the date he is notified or becomes aware of the happening of the above contingencies;

(b) In any case where a consular officer is entitled to represent a non-resident national of the sending state pursuant to subparagraph (a) of this paragraph, the consular officer shall, if not contrary to or incompatible with the laws of the receiving state, have the right, except as such right may be limited by paragraph (2) of Article 19, to take possession of property in which such non-resident national holds or claims an interest for the purpose of preserving and protecting such property on behalf of such national.

(3) (a) A consular officer shall have the right, within the discretion of the appropriate judicial or administrative authorities controlling the administration of decedents' estates and if not contrary to or incompatible with the laws of the receiving state, to undertake the full administration of an estate whenever a national of the sending state whose interest he is entitled to represent under subparagraph (a) of paragraph (2) of this Article

an interest of any kind in such property is held or claimed by a national of the sending state who is not resident in the receiving state and is not legally represented there by any person, a consular officer in whose district the estate of the decedent is being administered or, if no administration has been instituted, the property is situated, shall have the right, except as such right may be limited by paragraph (2) of Article 19, to represent such non-resident national as regards his interests in the property. If, however, such non-resident national should designate a third person to represent his interests in the receiving state or establish a residence in the receiving state, the right of the consular officer to represent such national shall terminate as of the date he is notified or becomes aware of the happening of the above contingencies;

(b) In any case where a consular officer is entitled to represent a non-resident national of the sending state pursuant to subparagraph (a) of this paragraph, the consular officer shall, if not contrary to or incompatible with the laws of the receiving state, have the right, except as such right may be limited by paragraph (2) of Article 19, to take possession of property in which such non-resident national holds or claims an interest for the purpose of preserving and protecting such property on behalf of such national.

(3) (a) A consular officer shall have the right, within the discretion of the appropriate judicial or administrative authorities controlling the administration of decedents' estates and if not contrary to or incompatible with the laws of the receiving state, to undertake the full administration of an estate whenever a national of the sending state whose interest he is entitled to represent under subparagraph (a) of paragraph (2) of this Article

would have been eligible to undertake such administration upon the making of a proper application therefor.

(b) A consular officer may also effect the distribution of an estate of small value left in the receiving state by a national of the sending state whenever, under the laws of the receiving state, the distribution of small estates may be made without the necessity of formal administration.

(4) If a national of the sending state dies while travelling in or passing through the receiving state without being either domiciled or resident there, the consular officer within whose district such national has died shall be permitted, for the purpose of safeguarding the money and effects in the personal possession of the deceased, to take immediate custody thereof, subject to the right of the administrative or judicial authorities of the receiving state to take possession of such money and effects in any case where the interests of justice or the investigation of crime so require. Any right to retain possession or to dispose of such money or effects shall be subject to the laws of the receiving state and to the provisions of this Part of this Convention.

Article 19

(1) A consular officer shall have the right, except as such right may be limited by paragraph (2) of this Article, to receive for transmission to a national of the sending state who is not a resident of the receiving state, through channels prescribed by the sending state, any money or property to which such national is entitled as a consequence of the death of another person. Such money or property may include, but is not limited to, shares in an estate and

would have been eligible to undertake such administration upon the making of a proper application therefor.

(b) A consular officer may also effect the distribution of an estate of small value left in the receiving state by a national of the sending state whenever, under the laws of the receiving state, the distribution of small estates may be made without the necessity of formal administration.

(4) If a national of the sending state dies while travelling in or passing through the receiving state without being either domiciled or resident there, the consular officer within whose district such national has died shall be permitted, for the purpose of safeguarding the money and effects in the personal possession of the deceased, to take immediate custody thereof, subject to the right of the administrative or judicial authorities of the receiving state to take possession of such money and effects in any case where the interests of justice or the investigation of crime so require. Any right to retain possession or to dispose of such money or effects shall be subject to the laws of the receiving state and to the provisions of this Part of this Convention.

Article 19

(1) A consular officer shall have the right, except as such right may be limited by paragraph (2) of this Article, to receive for transmission to a national of the sending state who is not a resident of the receiving state, through channels prescribed by the sending state, any money or property to which such national is entitled as a consequence of the death of another person. Such money or property may include, but is not limited to, shares in an estate and

payments made pursuant to workmen's compensation laws or any similar laws, as well as the proceeds of life insurance policies and any other credits resulting from the death of a person. If he does receive such money or property, he shall comply with any conditions laid down with regard to furnishing reasonable evidence of the receipt of the money or property by the national to whom it is to be transmitted and with regard to returning the money or property in the event he is unable to furnish such evidence.

(2) The rights conferred upon a consular officer by paragraph (2) of Article 18 and paragraph (1) of this Article to represent the interests of a national of the sending state and to accept money or property on his behalf shall in no event constitute an absolute obligation on a court, agency or person holding or owing such money or property for or to such national of the sending state to deliver the money or property to the consular officer should the court, agency or person desire to transmit directly the money or property to the person entitled thereto./

Article 20

/(1) The provisions of Articles 18 and 19 of this Convention shall not be deemed to accord a consular officer any greater rights to receive and transmit money or property than the person on whose behalf he acts, or in general any rights superior to those which the person whom he represents is entitled to enjoy.

(2) Whenever a consular officer shall exercise the rights conferred on him by Articles 18 and 19 of this Convention, he shall be subject, with respect to the exercise of such rights, to the laws of the receiving state and to the jurisdiction of the judicial and administrative authorities of the receiving

payments made pursuant to workmen's compensation laws or any similar laws, as well as the proceeds of life insurance policies and any other credits resulting from the death of a person. If he does receive such money or property, he shall comply with any conditions laid down with regard to furnishing reasonable evidence of the receipt of the money or property by the national to whom it is to be transmitted and with regard to returning the money or property in the event he is unable to furnish such evidence.

(2) The rights conferred upon a consular officer by paragraph (2) of Article 18 and paragraph (1) of this Article to represent the interests of a national of the sending state and to accept money or property on his behalf shall in no event constitute an absolute obligation on a court, agency or person holding or owing such money or property for or to such national of the sending state to deliver the money or property to the consular officer should the court, agency or person desire to transmit directly the money or property to the person entitled thereto./

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/(1) The provisions of Articles 18 and 19 of this Convention shall not be deemed to accord a consular officer any greater rights to receive and transmit money or property than the person on whose behalf he acts, or in general any rights superior to those which the person whom he represents is entitled to enjoy.

(2) Whenever a consular officer shall exercise the rights conferred on him by Articles 18 and 19 of this Convention, he shall be subject, with respect to the exercise of such rights, to the laws of the receiving state and to the jurisdiction of the judicial and administrative authorities of the receiving



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state in the same manner and to the same extent as a national of the receiving state.7

(New Article)

ESTATES AND TRANSFER OF PROPERTY

(1) In the case of the death of a national of the sending state in the territory of the receiving state, without having in the territory of his decease any known heir or testamentary executor, the appropriate local authorities of the receiving state shall as promptly as possible inform a consular officer of the sending state.

(2) A consular officer of the sending state may, within the discretion of the appropriate judicial authorities and if permissible under the then existing applicable local laws in the receiving state:

(a) take provisional custody of the personal property left by a deceased national of the sending state, provided that the decedent shall have left in the receiving state no heir or testamentary executor appointed by the decedent to take care of his personal estate; provided that such provisional custody shall be relinquished to a duly appointed administrator;

(b) administer the estate of a deceased national of the sending state who is not a resident of the receiving state at the time of his death, who leaves no testamentary executor, and who leaves in the receiving state no heir, provided that if authorized to administer the estate, the consular officer shall relinquish such administration upon the appointment of another administrator or upon the petition of heirs having the majority interest in such estate;

state in the same manner and to the same extent as a national of the receiving state.7

(New Article)

ESTATES AND TRANSFER OF PROPERTY

(1) The appropriate local authorities of the receiving state shall, but only to the extent practicable under existing local procedures and within the limits of the information normally available to them, make every effort to inform a consular officer of the sending state of the death, within the area subject to their jurisdiction, of any person known by them to be a national of the sending state.

(2) A consular officer of the sending state may, within the discretion of the appropriate judicial authorities and if permissible under the then existing applicable local laws in the receiving state:

(a) take provisional custody of the personal property left by a deceased national of the sending state, provided that the decedent shall have left in the receiving state no heir or testamentary executor appointed by the decedent to take care of his personal estate; provided that such provisional custody shall be relinquished to a duly appointed administrator;

(b) administer the estate of a deceased national of the sending state who is not a resident of the receiving state at the time of his death, who leaves no testamentary executor, and who leaves in the receiving state no heir, provided that if authorized to administer the estate, the consular officer shall relinquish such administration upon the appointment of another administrator or upon the petition of heirs having the majority interest in such estate;

(c) represent the interests of a national of the sending state in an estate in the receiving state, provided that such national is not a resident of the receiving state, unless or until such national is otherwise represented; provided, however, nothing herein shall authorize a consular officer to act as an attorney at law.

(3) Unless prohibited by law, a consular officer may, within the discretion of the court, agency, or person making distribution, receive for transmission to a national of the sending state who is not a resident of the receiving state any money or property to which such national is entitled as a consequence of the death of another person, including shares in an estate, payments made pursuant to workmen's compensation laws, pension and social benefits systems in general, and proceeds of insurance policies. The court, agency, or person making distribution may require that a consular officer comply with conditions laid down with regard to

(a) presenting a power of attorney or other authorization from such non-resident national,

(b) furnishing reasonable evidence of the receipt of such money or property by such national, and

(c) returning the money or property in the event he is unable to furnish such evidence.

(4) Whenever a consular officer shall perform the functions referred to in paragraphs (2) and (3) of this Article, he shall be subject, with respect to the exercise of such functions, to the laws of the receiving state and to the jurisdiction of the judicial and administrative authorities of the receiving state in the same manner and to the same extent as a national of the receiving state.

(c) represent the interests of a national of the sending state in an estate in the receiving state, provided that such national is not a resident of the receiving state, unless or until such national is otherwise represented; provided, however, nothing herein shall authorize a consular officer to act as an attorney at law.

(3) Unless prohibited by law, a consular officer may, within the discretion of the court, agency, or person making distribution, receive for transmission to a national of the sending state who is not a resident of the receiving state any money or property to which such national is entitled as a consequence of the death of another person, including shares in an estate, payments made pursuant to workmen's compensation laws, pension and social benefits systems in general, and proceeds of insurance policies. The court, agency, or person making distribution may require that a consular officer comply with conditions laid down with regard to

(a) presenting a power of attorney or other authorization from such non-resident national,

(b) furnishing reasonable evidence of the receipt of such money or property by such national, and

(c) returning the money or property in the event he is unable to furnish such evidence.

(4) Whenever a consular officer shall perform the functions referred to in paragraphs (2) and (3) of this Article, he shall be subject, with respect to the exercise of such functions, to the laws of the receiving state and to the jurisdiction of the judicial and administrative authorities of the receiving state in the same manner and to the same extent as a national of the receiving state.

Article 21

(1) When a vessel visits a port (which includes any place to which a vessel may come), in the receiving state, the master and members of the crew of the vessel shall be permitted to communicate with and visit a consular officer in whose district the port is situated. For the purpose of performing any of the duties he is authorized to perform by this Convention, a consular officer, accompanied, if he desires, by one or more consular officers or employees on his staff, may proceed on board the vessel after she has received pratique.

(2) A consular officer may invoke the assistance of the authorities of the receiving state in any matter pertaining to the performance of such duties, and they shall give the requisite assistance unless they have special reasons which would fully warrant refusing it in a particular case.

Article 22

(1) A consular officer may question the master and members of the crew of a vessel, examine her papers, take statements with regard to her voyage and her destination and generally facilitate her entry and departure. When custom house brokers or shipping agents are available, however, a consular officer shall not undertake to perform functions normally within the scope of their activities.

(2) A consular officer or employee may appear with the master or members of the crew of a vessel before the local administrative and judicial authorities, and may lend his assistance, including, where necessary, arranging for legal aid and acting as interpreter in matters between them and such authorities.

Article 21

(1) When a vessel visits a port (which includes any place to which a vessel may come), in the receiving state, the master and members of the crew of the vessel shall be permitted to communicate with and, subject to immigration laws and regulations of the receiving state, visit a consular officer in whose district the port is situated. For the purpose of performing any of the duties he is authorized to perform by this Convention, a consular officer, accompanied, if he desires, by one or more consular officers or employees on his staff, may proceed on board the vessel after she has received pratique.

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(3) A consular officer may, provided the judicial authorities of the receiving state do not take jurisdiction in accordance with the provisions of Article 23, decide disputes between the master and members of the crew of a vessel including disputes as to pay and contracts of service, arrange for the engagement and discharge of the master and members of the crew, and take measures for the preservation of good order and discipline on the vessel.

(4) A consular officer may take measures for the enforcement of the shipping laws of the sending state.

(5) A consular officer may, where necessary, make arrangements for the repatriation and the treatment in a hospital of the master or members of the crew or the passengers of a vessel.

Article 23

(1) Except at the request or with the consent of a consular officer, the administrative authorities of the receiving state shall not concern themselves with any matter concerning the internal management of the vessel. The judicial authorities of the receiving state may, however, exercise any jurisdiction which they may possess under the laws of the receiving state with regard to disputes as to wages and contracts of service between the master and members of the crew of a vessel. The administrative and judicial authorities shall not interfere with the detention in custody on a vessel of a seaman for disciplinary offenses, provided such detention is lawful under the law of the sending state and is not accompanied by unjustifiable severity or inhumanity.

(2) Without prejudice to the right of the administrative and judicial authorities

(3) A consular officer may, provided the judicial authorities of the receiving state do not take jurisdiction in accordance with the provisions of Article 23, decide or arrange for the settlement of disputes between the master and members of the crew of a vessel including disputes as to pay and contracts of service in accordance with the laws of the sending state, arrange for the engagement and discharge of the master and members of the crew, and take measures for the preservation of good order and discipline on the vessel.

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(1) Except at the request or with the consent of a consular officer, the administrative authorities of the receiving state shall not concern themselves with any matter concerning the internal management of the vessel. The judicial authorities of the receiving state may, however, exercise any jurisdiction which they may possess under the laws of the receiving state with regard to disputes as to wages and contracts of service between the master and members of the crew of a vessel. The administrative and judicial authorities shall not interfere with the detention in custody on a vessel of a seaman for disciplinary offenses, provided such detention is lawful under the law of the sending state and is not accompanied by unjustifiable severity or inhumanity.

(2) Without prejudice to the right of the administrative and judicial authorities

of the receiving state to take cognizance of crimes or offenses committed on board a vessel when she is in the ports or in the territorial waters of the receiving state or to enforce the laws of the receiving state applicable to vessels of any state in its ports and its territorial waters or to persons and property thereon, it is the common intention of the High Contracting Parties that the administrative authorities of the receiving state should not, except at the request or with the consent of the consular officer,

(a) concern themselves with any matter taking place on board a vessel except for the preservation of peace and order or in the interests of public health or safety, or

(b) institute prosecutions in respect of crimes or offenses committed on board a vessel in the territorial waters of the receiving state unless they are of a serious character or involve the tranquillity of the port or unless they are committed by or against persons other than members of the crew.

(3) If, for the purpose of exercising the rights referred to in paragraph (2) of this Article, it is the intention of the authorities of the receiving state to arrest or question any person or to seize any property or to institute any formal inquiry on board a vessel, the master or other officer acting on his behalf shall be given an opportunity to inform the consular officer, and, unless this is impossible on account of the urgency of the matter, to inform him in such time as to enable the consular officer or a consular employee on his staff to be present if he so desires. If a consular officer has not been present or represented, he shall be entitled, on his request, to receive

of the receiving state to take cognizance of crimes or offenses committed on board a vessel when she is in the ports or in the internal waters of the receiving state or to enforce the laws of the receiving state applicable to vessels of any state in its ports and its internal waters or to persons and property thereon, it is the common intention of the High Contracting Parties that the administrative authorities of the receiving state should not, except at the request or with the consent of the consular officer,

(a) concern themselves with any matter taking place on board a vessel except for the preservation of peace and order or in the interests of public health or safety, or

(b) institute prosecutions in respect of crimes or offenses committed on board a vessel in the ports or in the internal waters of the receiving state unless they are of a serious character or involve the tranquillity of the port or unless they are committed by or against persons other than members of the crew who are not nationals of the receiving state.

(3) If, for the purpose of exercising the rights referred to in paragraph (2) of this Article, it is the intention of the authorities of the receiving state to arrest or question any person or to seize any property or to institute any formal inquiry on board a vessel, the master or other officer acting on his behalf shall be given an opportunity to inform the consular officer, and, unless this is impossible on account of the urgency of the matter, to inform him in such time as to enable the consular officer or a consular employee on his staff to be present if he so desires. If a consular officer has not been present or represented, he shall be entitled, on his request, to receive

from the authorities of the receiving state full information with regard to what has taken place. The provisions of this paragraph do not apply to routine examinations by the authorities of the receiving state with regard to customs, health and the admission of aliens, or to the detention of a vessel or of any portion of her cargo arising out of civil or commercial proceedings in the courts of the receiving state.

Article 24

(1) A consular officer may visit at ports within his consular district a vessel of any flag destined to a port of the sending state, at the request or consent of that vessel, in order to enable him to procure the necessary information to prepare and execute such documents as may be required by the law of the sending state as a condition of entry of such vessel into its ports, and to furnish to the competent authorities of the sending state such information with regard to sanitary or other matters as such authorities may require.

(2) In exercising the rights conferred upon him by this Article, the consular officer shall act with all possible dispatch.

Article 25

(1) If a vessel of the sending state is wrecked in the receiving state, the consular officer in whose district the wreck occurs shall be informed as soon as possible by the appropriate authorities of the receiving state of the occurence of the wreck.

(2) The appropriate authorities of the receiving state shall take all practicable measures for the preservation of the wrecked vessel, of the lives of persons on board, of the cargo and of other property on board, and for the prevention and suppression of plunder or disorder

from the authorities of the receiving state full information with regard to what has taken place. The provisions of this paragraph do not apply to routine examinations by the authorities of the receiving state with regard to customs, health and the admission of aliens, or to the detention of a vessel or of any portion of her cargo arising out of civil or commercial proceedings in the courts of the receiving state.

Article 24

(1) A consular officer may visit at ports within his consular district a vessel of any flag destined to a port of the sending state, at the request or consent of the master of that vessel, in order to enable him to procure the necessary information to prepare and execute such documents as may be required by the law of the sending state as a condition of entry of such vessel into its ports, and to furnish to the competent authorities of the sending state such information with regard to sanitary or other matters as such authorities may require.

(2) In exercising the rights conferred upon him by this Article, the consular officer shall act with all possible dispatch.

Article 25

(1) If a vessel of the sending state is wrecked in the receiving state, the consular officer in whose district the wreck occurs shall be informed as soon as possible by the appropriate authorities of the receiving state of the occurence of the wreck.

(2) The appropriate authorities of the receiving state shall take all practicable measures for the preservation of the wrecked vessel, of the lives of persons on board, of the cargo and of other property on board, and for the prevention and suppression of plunder or disorder

on the vessel. These measures shall also extend to articles belonging to the vessel or forming part of her cargo which have become separated from the vessel.

(3) If the vessel is wrecked within a port or constitutes a navigational hazard within the territorial waters of the receiving state, the authorities of the receiving state may also order any measures to be taken which they consider necessary with a view to avoiding any damage that might otherwise be caused by the vessel to the port facilities or navigation.

(4) If the owner of the wrecked vessel, his agent, or the underwriters concerned, or the master are not in a position to make arrangements for the disposal of the vessel in accordance with the relevant provisions of the law of the receiving state, a consular officer shall be deemed to be authorized to make, acting for the owner, the same arrangements as the owner himself could have made if he had been present.

(5) Where any articles belonging to or forming part of a wrecked vessel of any flag (other than that of the receiving state), or belonging to or forming part of the cargo of any such vessel, are found on or near the coast of the receiving state or are brought into any port of that state, the consular officer in whose district the articles are found or brought into port shall be deemed to be authorized to make, acting for the owner of the articles, such arrangements relating to the custody and disposal of the articles as the owner himself could have made if,

(a) in the case of articles belonging to or forming part of the vessel, the vessel is a vessel of the sending state or, in the case of cargo, the cargo is owned by nationals of the sending state; and

on the vessel. These measures shall also extend to articles belonging to the vessel or forming part of her cargo which have become separated from the vessel.

(3) If the vessel is wrecked within a port or constitutes a navigational hazard within the territorial waters of the receiving state, the authorities of the receiving state may also order any measures to be taken which they consider necessary with a view to avoiding any damage that might otherwise be caused by the vessel to the port facilities or navigation.

(4) If the owner of the wrecked vessel, his agent, or the underwriters concerned, or the master are not in a position to make arrangements for the disposal of the vessel in accordance with the relevant provisions of the law of the receiving state, a consular officer shall be deemed to be authorized to make, acting for the owner, the same arrangements as the owner himself could have made if he had been present.

(5) Where any articles belonging to or forming part of a wrecked vessel of any flag (other than that of the receiving state), or belonging to or forming part of the cargo of any such vessel, are found on or near the coast of the receiving state or are brought into any port of that state, the consular officer in whose district the articles are found or brought into port shall be deemed to be authorized to make, acting for the owner of the articles, such arrangements relating to the custody and disposal of the articles as the owner himself could have made if,

(a) in the case of articles belonging to or forming part of the vessel, the vessel is a vessel of the sending state or, in the case of cargo, the cargo is owned by nationals of the sending state; and



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(b) neither the owner of the articles, his agent, the underwriters nor the master of the vessel is in a position to make such arrangements.

Article 26

(1) The provisions of Articles 15 to 25

(b) neither the owner of the articles, his agent, the underwriters nor the master of the vessel is in a position to make such arrangements.

(New Article on Aircraft)

For the purposes of Articles 21 to 25, the term "vessel" shall be deemed to include aircraft, and the term "shipping laws" shall be construed, as applied to aircraft, to refer to aviation laws, and the term "waters" shall be construed, as applied to aircraft, to refer to territory of the receiving state.

(New Article on Limitations)

(1) The privileges and immunities conferred by Articles 9 (2), 9 (4), 11 (1) (b), 11 (3), 11 (5), 13 (2), 13 (4), and 14 (2) plus suggested new paragraph shall not be accorded to a consular officer or employee, or member of his family forming part of his household, if such officer or employee is a national of the receiving state, or has the status in the receiving state of an alien lawfully admitted for permanent residence, or is engaged in any private occupation for gain in the receiving state, or is other than a full-time officer or employee of the sending state.

(2) The privileges and immunities conferred by Articles 7 (1), 8 (4) and 12 (2) shall not be accorded to the sending state with respect to a consular office in the charge of a consular officer or employee referred to in the preceding paragraph, or with respect to a residence for such consular officer or employee.

Note: Japan desires that the foregoing 2 new articles be placed between present Articles 25 and 26.

Article 26

(1) The provisions of Articles 15 to 25



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relating to the functions which a consular officer may perform are not exhaustive. A consular officer shall be permitted to perform other functions, involving no conflict with the laws of the receiving state, which are either in accordance with international law or practice relating to consular officers recognized in the receiving state or are acts to which no objection is taken by the receiving state.

(2) It is understood that in any case where any Article of this Convention gives a consular officer the right to perform any functions, it is for the sending state to determine to what extent its consular officers shall exercise such right.

(3) A consular officer may levy the fees prescribed by the sending state for the performance of consular services.

Article 27

(1) This Convention shall be ratified and the instruments of ratification thereof shall be exchanged at Washington. The Convention shall enter into force on the thirtieth day after the date of exchange of the instruments of ratification and shall continue in force for the term of five years.

relating to the functions which a consular officer may perform are not exhaustive. A consular officer shall be permitted to perform other functions, involving no conflict with the laws of the receiving state, which are either in accordance with international law or practice relating to consular officers recognized in the receiving state or are acts to which no objection is taken by the receiving state.

(2) It is understood that in any case where any Article of this Convention gives a consular officer the right to perform any functions, it is for the sending state to determine to what extent its consular officers shall exercise such right.

(New Paragraph)

Nothing contained in this Convention shall be construed to permit a consular officer or employee to take advantage of the rights, immunities or privileges accorded thereby for any purposes other than those for which these benefits have been granted by the terms of this Convention.

Note: Japan proposes that the Agreed Official Minute re Consular Convention be made a new paragraph in this Article.

(3) A consular officer may levy the fees prescribed by the sending state for the performance of consular services.

Article 27

(1) This Convention shall be ratified and the instruments of ratification thereof shall be exchanged at Washington. The Convention shall enter into force on the thirtieth day after the date of exchange of the instruments of ratification and shall continue in force for the term of five years.

(2) Unless six months before the expiration of the aforesaid term of five years either High Contracting Party shall have given notice to the other of the intention to terminate this Convention, the Convention shall continue in force after the aforesaid term and until six months from the date on which either High Contracting Party shall have given to the other notice of termination.

IN WITNESS WHEREOF, the respective Plenipotentiaries have signed this Convention and have hereunto affixed their seals.

DONE in duplicate, in the English and Japanese languages, both texts being equally authentic, at Tokyo, this day of

For the United States of America:

For Japan:

PROTOCOL

At the time of signing the Consular Convention between the United States of America and Japan, the undersigned Plenipotentiaries, duly authorized by their respective Governments, have further agreed on the following provisions, which shall be considered integral parts of the aforesaid Convention:

/1. Notwithstanding the provisions of Article 1, this Convention shall not apply to any area set forth in Article 3 of the Treaty of Peace with Japan signed at the city of San Francisco on September 8, 1951, as long as the situation set forth in the second sentence of the said Article 3 continues with respect to the administration, legislation and jurisdiction over such areas./

(2) Unless six months before the expiration of the aforesaid term of five years either High Contracting Party shall have given notice to the other of the intention to terminate this Convention, the Convention shall continue in force after the aforesaid term and until six months from the date on which either High Contracting Party shall have given to the other notice of termination.

IN WITNESS WHEREOF, the respective Plenipotentiaries have signed this Convention and have hereunto affixed their seals.

DONE in duplicate, in the English and Japanese languages, both texts being equally authentic, at Tokyo, this day of

For the United States of America:

For Japan:

PROTOCOL

At the time of signing the Consular Convention between the United States of America and Japan, the undersigned Plenipotentiaries, duly authorized by their respective Governments, have further agreed on the following provisions, which shall be considered integral parts of the aforesaid Convention:

/I. Notwithstanding the provisions of Article 1, this Convention shall not apply to any area set forth in Article 3 of the Treaty of Peace with Japan signed at the city of San Francisco on September 8, 1951, as long as the situation set forth in the second sentence of the said Article 3 continues with respect to the administration, legislation and jurisdiction over such areas./

| | |
|---|---|
| 1. Notwithstanding the provisions of Article I, this Convention shall not apply to any area set forth in Article 3 of the Treaty of Peace with Japan signed at the city of San Francisco on September 8, 1951, as long as any such area has not been returned to Japanese jurisdiction. | 1. This Convention shall not apply to the Panama Canal Zone, or any area set forth in Article 3 of the Treaty of Peace with Japan signed at the city of San Francisco on September 8, 1951, as long as any such area has not been returned to Japanese jurisdiction.<br><br>Note: Japan proposes deletion of the words "Notwithstanding the provisions of Article 1" at the beginning of this paragraph and the addition of "the Panama Canal Zone, or" between "to" and "any area". |
| /2. The term "nationals" in relation to Japan, referred to in subparagraph (3) (b) of Article 2 of the Convention, shall be deemed to include all native inhabitants of, and all juridical entities duly constituted under the applicable laws within, the area to which this Convention shall not apply in accordance with paragraph 1 of this Protocol./7 | 2. The term "nationals" in relation to Japan, referred to in subparagraph (3) (b) of Article 2 of the Convention, shall be deemed to include all native inhabitants of the area to which this Convention shall not apply in accordance with paragraph 1 of this Protocol. However, the right of Japanese consuls to represent Ryukyuans in the United States will not extend to those matters for which authorization from the appropriate authorities in the Ryukyu Islands would be required. The appropriate authorities of the two Governments will consult, whenever necessary, concerning the consular services provided for in this Convention to be rendered in the interests of the Ryukyuans in the United States.<br><br>Note: Japan does not agree with the deletion of this paragraph. Instead new wording is proposed. |
| 3. Articles 5 (3), 9 (2), 11 (1) (b), 11 (3), 11 (5), 13 and 14 shall not be applicable to any person who has the status in the receiving state of an alien lawfully admitted for permanent residence. | 3. Article 13 (1) shall not be applicable to any person who has the status in the receiving state of an alien lawfully admitted for permanent residence.<br><br>Note: See proposed New Article on Limitations. |
| 4. Notwithstanding the provision of Article 2 (5), the term "vessel" shall, for the purpose of Articles 21 (1), 22 (1), 22 (2), 22 (3), 22 (5), 23 (1) and 23 (3), be deemed to refer to: | 4. Notwithstanding the provision of Article 2 (5), the term "vessel" shall, for the purpose of Articles 21 (1), 22 (1), 22 (2), 22 (3), 22 (5), 23 (1) and 23 (3), be deemed to refer to: |



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(a) any vessel of the receiving state or any third party chartered on bare boat terms by a national or nationals of the sending state; and

(b) any vessel of the sending state except that chartered on bare boat terms by a national or nationals of the receiving state.

/5. Without derogation to such rights and benefits as they have under international law, officers or employees with diplomatic status and diplomatic property, including immovable property owned or otherwise held or occupied by the sending state and used exclusively either for embassy purposes or for residences for one or more officers or employees of the embassy, shall be accorded rights, benefits and immunities no less favorable than those accorded under this Convention./

5. The provisions of Articles 13 and 14 shall have like application to diplomatic officers and employees, without prejudice to such rights and benefits as they may be otherwise entitled to enjoy as officers and employees of the diplomatic mission of each country in the territory of the other.

6. Without derogation of such rights and benefits as the sending state may have under international law with respect to diplomatic property, the provisions of Article 12 (except subparagraphs (b) and (c) of paragraph (1) shall likewise apply with respect to immovable property owned or otherwise held or occupied by the sending state and used either for embassy purposes or for residences for one or more officers or employees of the embassy.

Note: Either paragraph 5 or 6 is acceptable to the Department.

IN WITNESS WHEREOF, the respective Plenipotentiaries have signed this Protocol and have hereunto affixed their seals.

(a) any vessel of the receiving state or any third party chartered on bare boat terms by a national or nationals of the sending state; and

(b) any vessel of the sending state except that chartered on bare boat terms by a national or nationals of the receiving state.

5. ////////////////////

6. ////////////////////

Note: Japan desires deletion of paragraphs 5 and 6 altogether.

IN WITNESS WHEREOF, the respective Plenipotentiaries have signed this Protocol and have hereunto affixed their seals.



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DONE in duplicate, in the English and Japanese languages, both texts being equally authentic, at Tokyo, this day of

For the United States of America:

For Japan:

APPENDIX
AGREED OFFICIAL MINUTES

Re Articles 2 (10), 13 (3) and 14 (3):

It is understood that a consular guard, messenger or driver who is a national of the sending state shall not, by virtue of said employment alone, be entitled to the financial benefits and privileges of Articles 13 and 14 unless he can otherwise qualify therefor under Articles 13 (3) and 14 (3).

Re Article 2 (11):

Reserve Officers and Foreign Service Staff Personnel in the United States Foreign Service will be considered employees of the United States of America for an indefinite period of time; and officers and other personnel occupying comparable positions in the Japanese Foreign Service will be considered employees of Japan for an indefinite period of time.

DONE in duplicate, in the English and Japanese languages, both texts being equally authentic, at Tokyo, this day of

For the United States of America:

For Japan:

APPENDIX
AGREED OFFICIAL MINUTES

Re Articles 2 (10), 13 (3) and 14 (3):

It is understood that a consular guard, messenger or driver who is a national of the sending state shall not, by virtue of said employment alone, be entitled to the financial benefits and privileges of Articles 13 and 14 unless he can otherwise qualify therefor under Articles 13 (3) and 14 (3).

Re Article 2 (10):

It is understood that the administrative or technical staff consists of staff officers, clerks and typists, and that the service staff consists of telephone operators, consular guards, messengers, drivers, and those in charge of the upkeep, or of the domestic duties, of the consular office.

Re Article 2 (11):

Reserve Officers and Foreign Service Staff Personnel in the United States Foreign Service will be considered employees of the United States of America for an indefinite period of time; and officers and other personnel occupying comparable positions in the Japanese Foreign Service will be considered employees of Japan for an indefinite period of time.

Note: Japan proposes that this Minute (originally appended to Article 2 (11) be either deleted or appended to Article 2 (10).

Re Article 6:

It is understood that the sending state shall not appoint or employ a number of consular officers or employees exceeding what is reasonable and normal, having regard to circumstances and conditions in the consular district and as to the needs of the particular consulate.

Note: See alternative proposal in Article 6 (4).

Re Articles 7 and 12:

The phrase "one or more persons acting on behalf of the sending state" referred to in Articles 7 and 12 includes, when the United States of America is the sending state, the Secretary of State, the Chief of the Diplomatic Mission in Japan, or any other officer of the United States of America acting on its behalf; but does not include any private individual or juridical entity.

Re Articles 7 and 12:

The phrase "one or more persons acting on behalf of the sending state" referred to in Articles 7 and 12 includes, when the United States of America is the sending state, the Secretary of State, the Chief of the Diplomatic Mission in Japan, or any other officer of the United States of America acting on its behalf; but does not include any private individual or juridical entity.

Re Article 10 (1):

In sending or receiving consular pouches through postal channels, a career consular officer shall be subject to the postal laws and regulations of the receiving state. Nothing contained herein, however, shall be deemed to affect the provisions of Article 10.

Re Article 10 (1):

In sending or receiving consular pouches through postal channels, a consular officer shall be subject to the postal laws and regulations of the receiving state. Nothing contained herein, however, shall be deemed to affect the provisions of Article 10.

Note: See proposed New Article on Limitations.

Re Article 11 (1) (a):

It is understood that the consent of the sending state referred to in Article 11 (1) (a) shall be notified to the receiving state in writing through diplomatic channel.



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Re Articles 14 and 17:

The provisions of Articles 14 and 17 (5) shall not be construed to prejudice the laws and regulations of the receiving state concerning the consulate's importation of cinema films excluding films for academic or cultural use, and films which are in fact documentary or newsreels, imported exclusively for official use.

Re Article 23 (2):

Crimes or offenses against the laws of the receiving state regarding public health or customs committed on board a vessel in the territorial waters of that state shall be deemed to be included in the crimes or offenses involving the tranquillity of the port as set out in paragraph (2) (b) of Article 23.

Re Consular Convention:

Nothing contained in this Convention shall be construed to permit a consular officer or employee to take advantage of the rights, immunities or privileges accorded thereby for any purposes other than those for which

Re Article 13 (2) (a):

It is understood that the exemption of taxes and similar charges with respect to vehicles referred to in Article 13 (2) (a) shall be granted only to those vehicles which are entitled to receive, or have received, consular number plates.

Re Articles 14 and 17:

The provisions of Articles 14 and 17 (5) shall not be construed to prejudice the laws and regulations of the receiving state concerning the consulate's importation of cinema films excluding films for academic or cultural use, and films which are in fact documentary or newsreels, imported exclusively for official use.

Re Article 17 (1) (e):

It is understood that the evidence to be taken by consuls shall include testimony given by expert witnesses, but shall not include any material evidence.

Re Article 23 (2):

Crimes or offenses against the laws of the receiving state regarding public health, customs or immigration committed on board a vessel in the ports or internal waters of that state shall be deemed to be included in the crimes or offenses involving the tranquillity of the port as set out in paragraph (2) (b) of Article 23.

Re Consular Convention:

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these benefits have been granted by the terms of this Convention.

/Re Protocol 1 and 2:

The provisions of paragraphs 1 and 2 of the Protocol shall not affect or prejudice the authority of the United States of America under Article 3 of the Treaty of Peace with Japan signed in San Francisco on September 8, 1959 over the remaining islands referred to in these paragraphs./

Note: Japan proposes that this Minute be made a new paragraph in Article 26.

/Re Protocol 1 and 2:

The provisions of paragraphs 1 and 2 of the Protocol shall not affect or prejudice the authority of the United States of America under Article 3 of the Treaty of Peace with Japan signed in San Francisco on September 8, 1959 over the remaining islands referred to in these paragraphs./

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